

**ARKANSAS CODE  
OF 1987  
ANNOTATED**

**OFFICIAL EDITION**



**VOLUME 28B • TITLE 27, CH. 49-117**



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# ARKANSAS CODE OF 1987 ANNOTATED



## VOLUME 28B

2010 Replacement

### TITLE 27: TRANSPORTATION (CHAPTERS 49-117)

*Prepared by the Editorial Staff of the Publisher*

Under the Direction and Supervision of the  
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## Sources

This volume contains legislation enacted by the Arkansas General Assembly through the 2010 Fiscal Session. Annotations are to the following sources:

Arkansas Advance Reports through 2010 Ark. LEXIS 183 (April 1, 2010) and 2010 Ark. App. LEXIS 441 (May 12, 2010).

Federal Supplement through August 11, 2010.

Federal Reporter 3d Series through August 11, 2010.

United States Supreme Court Reports through August 11, 2010.

Bankruptcy Reporter through August 11, 2010.

Arkansas Law Notes through the 2008 Edition.

Arkansas Law Review through Volume 61, p. 787.

University of Arkansas at Little Rock Law Review through Volume 30, p. 267.

A.L.R. 6th through Volume 17, p. 757.

ALR Fed. 2d through Volume 26, p. 381.

## **Titles of the Arkansas Code**

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## **User's Guide**

Differences in language, subsection order, punctuation, and other variations in the statute text from legislative acts, supplement pamphlets, and previous versions of the bound volume are editorial changes made at the direction of the Arkansas Code Revision Commission pursuant to the authority granted in § 1-2-303.

Many of the Arkansas Code's research aids, as well as its organization and other features, are described in the User's Guide, which appears near the beginning of the bound Volume 1 of the Code.



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**TRANSPORTATION**  
(CHAPTERS 1-48 IN VOLUME 28A)

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- 2. DEFINITIONS.

## RESEARCH REFERENCES

**Am. Jur.** 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 11 et seq., § 204 et seq.

**C.J.S.** 60 C.J.S., Motor Vehicles, § 14 et seq.

## SUBCHAPTER 1 — TITLE, APPLICABILITY, AND CONSTRUCTION GENERALLY

## SECTION.

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27-49-112. No interference with rights of real property owners.

**Publisher's Notes.** For Comments regarding the Uniform Vehicle Code, see Commentaries Volume B.

**Effective Dates.** Acts 1937, No. 300, § 165: Mar. 23, 1937. Emergency clause provided: "It is hereby ascertained and determined by the General Assembly that the proper regulation of traffic on the highways is a necessary function of the State Government, and that the loss of life and property under the present laws creates an emergency. Therefore, this act being necessary for the immediate preservation of the public peace, health and safety, shall go into effect immediately upon its passage and approval."

Acts 1994 (2nd Ex. Sess.), No. 32, § 7: Aug. 25, 1994. Emergency clause provided: "It is hereby found and determined by the Seventy-Ninth General Assembly of the State of Arkansas meeting in the

Second Extraordinary Session of 1994 that current Arkansas laws regarding the enforcement of traffic laws prevent law enforcement officers from issuing traffic tickets on private roadways; that, in some cases, the private road ownership exceeds several hundred miles of private roads and the private owners wish to have state and local traffic laws enforced on those private roads; and that a lack of law enforcement jurisdiction on private roads, especially where the ownership exceeds several hundred miles, presents a danger to the public safety. Therefore, in order to reduce the threat to the safety of the motoring public, an emergency is hereby declared to exist, and this act being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

## 27-49-101. Title.

This act may be cited as the "Uniform Act Regulating Traffic on Highways of Arkansas".

**History.** Acts 1937, No. 300, § 162; Pope's Dig., § 6822; A.S.A. 1947, § 75-1015.

**Publisher's Notes.** In addition to statutes contained in this subtitle relating to traffic regulations, Acts. 1937, No. 300,

also enacted provisions relating to size and load regulations (§ 27-35-101 et seq.), lighting regulations (§ 27-36-101 et seq.), and equipment regulations (§ 27-37-101 et seq.).

**Meaning of "this act".** Acts 1937, No. 300, codified as §§ 6-19-111, 27-35-101 — 27-35-111, 27-36-101, 27-36-102, 27-36-201 — 27-36-204, 27-36-206 — 27-36-212, 27-36-213 [repealed], 27-36-214 — 27-36-220, 27-37-101, 27-37-102, 27-37-202 — 27-37-206, 27-37-301 — 27-37-303, 27-37-305, 27-37-401, 27-37-501, 27-37-502, 27-37-601, 27-49-101 — 27-49-112, 27-49-201 — 27-49-219, 27-50-101, 27-50-102, 27-50-

304, 27-50-307, 27-50-308, 27-50-601 — 27-50-603, 27-50-604 [repealed], 27-50-605, 27-50-801 [repealed], 27-50-804, 27-50-805, 27-51-201, 27-51-202, 27-51-206, 27-51-208 — 27-51-211, 27-51-301 — 27-51-308, 27-51-401 — 27-51-405, 27-51-501 — 27-51-503, 27-51-601 — 27-51-603, 27-51-702, 27-51-703, 27-51-705, 27-51-801 — 27-51-803, 27-51-901 — 27-51-903, 27-51-1201 — 27-51-1205, 27-51-1301 — 27-51-1304, 27-51-1306 — 27-51-1308, 27-51-1401 — 27-51-1405, 27-52-101, 27-52-103 — 27-52-109, 27-53-101 — 27-53-105, 27-53-201 — 27-53-208.

## **27-49-102. Applicability to operation on highways — Exceptions.**

The provisions of this subtitle relating to the operation of vehicles refer exclusively to the operation of vehicles upon highways except:

(1) Where a different place is specifically referred to in a given section.

(2) The provisions of §§ 27-50-307, 27-50-308, 27-53-101 — 27-53-105, and 27-53-201 — 27-53-208 shall apply upon highways and elsewhere throughout the state.

(3) Where the owner of a private roadway within a planned community in Arkansas grants express permission for the state and local law enforcement authorities to enter on and to enforce the provisions of this subtitle and other traffic laws of the state or local authorities on those private roadways in the planned community.

**History.** Acts 1937, No. 300, § 20; Pope's Dig., § 6678; A.S.A. 1947, § 75-420; Acts 1994 (2nd Ex. Sess.), No. 32, § 1.

**Cross References.** Military forces unrestricted by traffic regulations, § 12-62-407.

## **CASE NOTES**

### **ANALYSIS**

**Legislative Intent.**  
**Parking Lots.**

### **Legislative Intent.**

It is evident from the history of subdivision (2) of this section that the legislature intended that the offense of DWI not be restricted to the highways of this state; the legislature has consistently intended that DWI constitutes a criminal offense whether it occurs on highways or on pri-

vate property. *Hill v. State*, 315 Ark. 297, 868 S.W.2d 44 (1993).

### **Parking Lots.**

Inasmuch as a shopping center parking lot is not a highway, a person whose car collided with another vehicle as he was pulling out of a parking space could not be charged with the violation of failure to yield right-of-way. *Hartson v. City of Pine Bluff*, 270 Ark. 748, 606 S.W.2d 149 (1980).



**27-49-103. Construction.**

This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law.

**History.** Acts 1937, No. 300, § 161; Pope's Dig., § 6821; A.S.A. 1947, § 75-1014.  
**Meaning of "this act".** See note to § 27-49-101.

**27-49-104. Penalty.**

Unless otherwise declared in this act with respect to particular offenses, it is a misdemeanor for any person to do any act forbidden or fail to perform any act required in this act.

**History.** Acts 1937, No. 300, § 21; Pope's Dig., § 6679; A.S.A. 1947, § 75-421.  
**Meaning of "this act".** See note to § 27-49-101.

**Cross References.** Penalties and enforcement, § 27-50-101 et seq.

**CASE NOTES**

**Cited:** McKinney v. City of El Dorado, 308 Ark. 284, 824 S.W.2d 826 (1992).

**27-49-105. Provisions to be uniform.**

The provisions of this act shall be applicable and uniform throughout this state and in all political subdivisions and municipalities therein.

**History.** Acts 1937, No. 300, § 25; Pope's Dig., § 6683; A.S.A. 1947, § 75-425.  
**Meaning of "this act".** See note to § 27-49-101.

**CASE NOTES****Municipal Regulation.**

The provisions of this section do not prevent a city from regulating use of its

streets by trucks. House v. City of Texarkana, 225 Ark. 162, 279 S.W.2d 831 (1955).

**27-49-106. Powers of local authorities.**

(a)(1) No local authority shall enact or enforce any rule or regulation in conflict with the provisions of this subtitle unless expressly authorized in this subtitle.

(2) Local authorities may, however, adopt additional traffic regulations which are not in conflict with the provisions of this subtitle.

(3) Local authorities may enact and enforce traffic rules and regulations which are not in conflict with the provisions of this subtitle for private roadways but only after being granted express permission by the owner of the private roadway within the planned community.

(b) The provisions of this subtitle shall not be deemed to prevent local authorities with respect to streets and highways under their jurisdiction and within the reasonable exercise of the police power from:

(1) Regulating the standing or parking of vehicles, including the ability to establish districts for the purpose of limiting the time, place, and manner of public parking in designated areas;

(2) Regulating traffic by means of police officers or traffic control signals;

(3) Regulating or prohibiting processions or assemblages on the highways;

(4) Designating particular highways as one-way highways and requiring that all vehicles thereon be moved in one specific direction;

(5) Regulating the speed of vehicles in public parks;

(6) Designating any highway as a through highway and requiring that all vehicles stop before entering or crossing it or designating any intersection as a stop intersection and requiring all vehicles to stop at one (1) or more entrances to the intersection;

(7) Restricting the use of highways as authorized in §§ 27-35-101 — 27-35-111; and

(8) Regulating or prohibiting the traffic from and use of mopeds, three-wheeled vehicles, and other similar vehicles.

(c) No ordinance or regulation enacted under subdivision (b)(1), (4), (5), (6), or (7) of this section shall be effective until signs giving notice of local traffic regulations are posted upon or at the entrances to the highways or parts affected, as may be most appropriate.

(d) No provision of this subtitle, of other state traffic laws, or of any local traffic ordinance or regulation enacted under authority of subdivision (a)(3) of this section shall be effective on a private roadway of a planned community until signs giving notice of the owner's grant of permission to enforce those state and local traffic regulations are posted upon or at the entrances to the planned community's private roadways or affected parts thereof.

**History.** Acts 1937, No. 300, §§ 25, 26; Pope's Dig., §§ 6683, 6684; Acts 1983, No. 405, § 1; A.S.A. 1947, §§ 75-425, 75-426; Acts 1994 (2nd Ex. Sess.), No. 32, § 2; 1999, No. 1199, § 1.

**Publisher's Notes.** Acts 1983, No. 405, § 2, provided that the purpose of the act

was to grant to all cities and towns the authority to regulate or prohibit the traffic and use on the streets and highways under their jurisdiction of mopeds, three-wheeled vehicles, and other similar vehicles by ordinance.

CASE NOTES

ANALYSIS

State Highway Signs.  
Use of Streets.

State Highway Signs.

State Highway Commission has power to erect no parking signs on a part of the

state highway system that is in city limits. Arkansas State Hwy. Comm'n v. City of Little Rock, 227 Ark. 660, 300 S.W.2d 929 (1957).

Use of Streets.

This subtitle did not repeal or supersede § 14-54-103, §§ 14-55-101 — 14-55-103,

or § 14-301-101, and a city is authorized under those sections to regulate the use of streets by trucks. House v. City of Texarkana, 225 Ark. 162, 279 S.W.2d 831 (1955).

### **27-49-107. Obedience to police officers required.**

No person shall willfully fail or refuse to comply with any lawful order or direction of any police officer invested by law with authority to direct, control, or regulate traffic.

**History.** Acts 1937, No. 300, § 22; Pope's Dig., § 6680; A.S.A. 1947, § 75-422.

### **27-49-108. Governmental personnel subject generally.**

The provisions of this act applicable to the drivers of vehicles upon the highways shall apply to the drivers of all vehicles owned or operated by the United States, this state, or any county, city, town, district, or any other political subdivision of this state, subject to such specific exceptions as are set forth in this act with reference to authorized emergency vehicles.

**History.** Acts 1937, No. 300, § 23; Pope's Dig., § 6681; A.S.A. 1947, § 75-423. **Meaning of "this act".** See note to § 27-49-101.

### **27-49-109. Drivers of authorized emergency vehicles.**

(a) The driver of any authorized emergency vehicle when responding to an emergency call upon approaching a red or stop signal or any stop sign shall slow down as necessary for safety but may proceed cautiously past the red or stop sign or signal. At other times, drivers of authorized emergency vehicles shall stop in obedience to a stop sign or signal.

(b) No driver of any authorized emergency vehicle shall assume any special privilege under this act except when the vehicle is operated in response to an emergency call or in the immediate pursuit of an actual or suspected violator of the law.

**History.** Acts 1937, No. 300, § 23; Pope's Dig., § 6681; A.S.A. 1947, § 75-423. **Meaning of "this act".** See note to § 27-49-101.

## **RESEARCH REFERENCES**

**Ark. L. Rev. Torts — Duty of Emergency Vehicles**, 21 Ark. L. Rev. 272 (1967).

## **CASE NOTES**

### **Duty to Exercise Care.**

Even if an ambulance is exempt from observing certain traffic regulations and

has the right-of-way under appropriate circumstances, it does not follow that this is an exemption from the duty to exercise



care commensurate with the circumstances for the safety of other travelers or persons. *Freeman v. Reeves*, 241 Ark. 867, 410 S.W.2d 740 (1967).

The driver of an emergency vehicle is held to a standard of ordinary care. *City of Little Rock v. Weber*, 298 Ark. 382, 767 S.W.2d 529 (1989).

### **27-49-110. Persons working on highway surfaces.**

The provisions of this act shall not apply to persons, teams, motor vehicles, and other equipment while actually engaged in work upon the surface of a highway but shall apply to such persons and vehicles when traveling to or from such work.

**History.** Acts 1937, No. 300, § 23; Pope's Dig., § 6681; A.S.A. 1947, § 75-423.

**Meaning of "this act".** See note to § 27-49-101.

### **CASE NOTES**

#### **Negligence.**

Operation of caterpillar motor grader on left-hand side of road while working surface of highway was not in itself sufficient

to make operator guilty of negligence when collision occurred with oncoming truck. *McMillin v. Bearden*, 237 Ark. 673, 376 S.W.2d 665 (1964).

### **27-49-111. Use of bicycles or animals.**

Every person riding a bicycle or an animal, or driving any animal drawing a vehicle upon a highway, shall have all the rights and all of the duties applicable to the driver of a vehicle, except those provisions of this act which by their nature can have no applicability.

**History.** Acts 1937, No. 300, § 24; Pope's Dig., § 6682; Acts 1981, No. 699, § 1; A.S.A. 1947, § 75-424.

**Meaning of "this act".** See note to § 27-49-101.

### **27-49-112. No interference with rights of real property owners.**

(a) Nothing in this subtitle shall be construed to prevent the owner of real property used by the public for purposes of vehicular travel, by permission of the owner and not as matter of right, from prohibiting such use, or from requiring other or different or additional conditions than those specified in this subtitle, or otherwise regulating such use as may seem best to such owner.

(b) Nothing in this subtitle shall be construed to prevent the owner of a private roadway in a planned community, having granted express permission for the state and local law enforcement authorities to enter on and to enforce the state and local traffic laws, from revoking the permission and notifying the state and local authorities of the revocation of the permission.

**History.** Acts 1937, No. 300, § 27; Pope's Dig., § 6685; A.S.A. 1947, § 75-427; Acts 1994 (2nd Ex. Sess.), No. 32, § 3.

## SUBCHAPTER 2 — DEFINITIONS

## SECTION.

- 27-49-201. Definitions generally.
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- 27-49-203. Business and residence districts.
- 27-49-204. Crosswalk.
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- 27-49-206. Intersection.
- 27-49-207. Local authorities.
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## SECTION.

- 27-49-210. Rail carriers.
- 27-49-211. Right-of-way.
- 27-49-212. Roadways.
- 27-49-213. Safety zones.
- 27-49-214. Tires.
- 27-49-215. Tractors.
- 27-49-216. Traffic.
- 27-49-217. Traffic signals and devices.
- 27-49-218. Trailers.
- 27-49-219. Vehicles.

**Publisher's Notes.** For Comments regarding the Uniform Vehicle Code, see Commentaries Volume B.

**Effective Dates.** Acts 1937, No. 300, § 165: Mar. 23, 1937. Emergency clause provided: "It is hereby ascertained and determined by the General Assembly that the proper regulation of traffic on the highways is a necessary function of the State Government, and that the loss of life and property under the present laws creates an emergency. Therefore, this act being necessary for the immediate preservation of the public peace, health and safety, shall go into effect immediately upon its passage and approval."

Acts 1995, No. 753, § 5: Mar. 23, 1995. Emergency clause provided: "It is hereby found and determined by the General As-

sembly that present law provides that police vehicles must be equipped with blue rotating or flashing emergency lights; that a combination of blue, red, amber or white rotating or flashing emergency lights are more visible during daylight hours; that law enforcement agencies should be given the option of equipping their vehicles with either blue lights or blue, red, white, or amber lights; that this act so provides; and that this act should go into effect immediately in order to allow police agencies to exercise this option as soon as possible. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

## 27-49-201. Definitions generally.

As used in this act, the following words and phrases shall have the meanings respectively ascribed to them in this subchapter, unless the context otherwise requires.

**History.** Acts 1937, No. 300, § 1; Pope's Dig., § 6659; A.S.A. 1947, § 75-401.

**Publisher's Notes.** In addition to statutes contained in this subtitle relating to traffic regulations, Acts 1937, No. 300, also enacted provisions relating to size and load regulations (§ 27-35-101 et seq.), lighting regulations (§ 27-36-101 et seq.), and equipment regulations (§ 27-37-101 et seq.).

**Meaning of "this act".** Acts 1937, No.

300, codified as §§ 6-19-111, 27-35-101 — 27-35-111, 27-36-101, 27-36-102, 27-36-201 — 27-36-204, 27-36-206 — 27-36-212, 27-36-213 [repealed], 27-36-214 — 27-36-220, 27-37-101, 27-37-102, 27-37-202 — 27-37-206, 27-37-301 — 27-37-303, 27-37-305, 27-37-401, 27-37-501, 27-37-502, 27-37-601, 27-49-101 — 27-49-112, 27-49-201 — 27-49-219, 27-50-101, 27-50-102, 27-50-304, 27-50-307, 27-50-308, 27-50-601 — 27-50-603, 27-50-604 [repealed], 27-50-

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### **27-49-202. Administration.**

(a) "Commissioner" means the Director of the Department of Finance and Administration in his or her capacity as the Commissioner of Motor Vehicles of this state.

(b) "Office" means the Office of Motor Vehicle within the Revenue Division of the Department of Finance and Administration, acting directly or through its duly authorized officers and agents.

(c) "State Police Department" means the Department of Arkansas State Police.

(d) "Commission" means the State Highway Commission.

**History.** Acts 1937, No. 300, § 8; Pope's Dig., § 6666; A.S.A. 1947, § 75-408.

### **27-49-203. Business and residence districts.**

(a) "Business district" means the territory contiguous to and including a highway when fifty percent (50%) or more of the frontage thereon for a distance of three hundred feet (300') or more is occupied by buildings in use for business.

(b) "Residence district" means the territory contiguous to and including a highway not comprising a business district when the property on the highway for a distance of three hundred feet (300') or more is in the main improved with residences or residences and buildings in use for business.

**History.** Acts 1937, No. 300, § 16; Pope's Dig., § 6674; A.S.A. 1947, § 75-416.

### **27-49-204. Crosswalk.**

"Crosswalk" means:

(1) That portion of a roadway ordinarily included within the prolongation or connection of the lateral lines of sidewalks at intersections; and

(2) Any portion of a roadway distinctly indicated for pedestrian crossing by lines or other markings on the surface.

**History.** Acts 1937, No. 300, § 14; Pope's Dig., § 6672; A.S.A. 1947, § 75-414.



**27-49-205. Explosives and flammable liquid.**

(a) "Explosives" means any chemical compound or mechanical mixture that is commonly used or intended for the purpose of producing an explosion and which contains any oxidizing and combustive units or other ingredients in proportions, quantities, or packing that an ignition by fire, by friction, by concussion, by percussion, or by detonator of any part of the compound or mixture may cause such a sudden generation of highly heated gases that the resultant gaseous pressures are capable of producing destructive effects on contiguous objects or of destroying life or limb.

(b) "Flammable liquid" means any liquid which has a flash point of seventy degrees Fahrenheit (70° F.), or less as determined by a Tabliabue or equivalent closed cup test device.

**History.** Acts 1937, No. 300, § 7; Pope's Dig., § 6665; A.S.A. 1947, § 75-407.

**27-49-206. Intersection.**

"Intersection" means the area embraced within the prolongation or connection of the lateral curb lines, or if none, then the lateral boundary lines of the roadways of two (2) highways which join one another at, or approximately at, right angles, or the area within which vehicles traveling upon different highways joining at any other angle may come in conflict.

**History.** Acts 1937, No. 300, § 13; Pope's Dig., § 6671; A.S.A. 1947, § 75-413.

**CASE NOTES**

**Cited:** Glover v. Dixon, 285 Ark. 140, 688 S.W.2d 930 (1985).

**27-49-207. Local authorities.**

"Local authorities" means every county, municipal, or other local board or body having authority to adopt local police regulations under the Constitution and laws of this state.

**History.** Acts 1937, No. 300, § 11; Pope's Dig., § 6669; A.S.A. 1947, § 75-411.

**27-49-208. Persons.**

(a) "Person" means every natural person, firm, copartnership, association, or corporation.

(b) "Pedestrian" means any person afoot.

(c) "Driver" means every person who drives or is in actual physical control of a vehicle.

(d) "Owner" means a person who holds the legal title of a vehicle, or in the event a vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, or in the event a mortgagor of a vehicle is entitled to possession, then the conditional vendee or lessee or mortgagor shall be deemed the owner for the purpose of this act.

**History.** Acts 1937, No. 300, § 9; Pope's Dig., § 6667; A.S.A. 1947, § 75-409.

**Meaning of "this act".** See note to § 27-49-201.

### **27-49-209. Police officer.**

"Police officer" means every officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations.

**History.** Acts 1937, No. 300, § 10; Pope's Dig., § 6668; A.S.A. 1947, § 75-410.

## **CASE NOTES**

**Cited:** Kerr v. Greenstein, 213 Ark. 447, 212 S.W.2d 1 (1948); Thomas v. Newman, 262 Ark. 42, 553 S.W.2d 459 (1977).

### **27-49-210. Rail carriers.**

(a) "Railroad" means a carrier of persons or property upon cars, other than streetcars, operated upon stationary rails.

(b) "Railroad train" means a steam engine, electric, or other motor, with or without cars coupled thereto, operated upon rails, except streetcars.

(c) "Streetcar" means a car other than a railroad train for transporting persons or property and operated upon rails principally within a municipality.

**History.** Acts 1937, No. 300, § 6; Pope's Dig., § 6664; A.S.A. 1947, § 75-406.

### **27-49-211. Right-of-way.**

"Right-of-way" means the privilege of the immediate use of the highway.

**History.** Acts 1937, No. 300, § 19; Pope's Dig., § 6677; A.S.A. 1947, § 75-419.

CASE NOTES

**Parking Lots.**

Inasmuch as a shopping center parking lot is not a highway, a person whose car collided with another vehicle as he was pulling out of a parking space could not be

charged with the violation of failure to yield right-of-way. *Hartson v. City of Pine Bluff*, 270 Ark. 748, 606 S.W.2d 149 (1980).

**27-49-212. Roadways.**

(a) "Street or highway" means the entire width between property lines of every way or place of whatever nature when any part thereof is open to the use of the public, as a matter of right, for purposes of vehicular traffic.

(b) "Private road or driveway" means every way or place in private ownership and used for vehicular travel by the owner and those having express or implied permission from the owner but not by other persons.

(c) "Roadway" means that portion of a highway improved, designed, or ordinarily used for vehicular travel.

(d) "Sidewalk" means that portion of a street between the curb lines, or the lateral lines of a roadway, and the adjacent property lines intended for the use of pedestrians.

(e) "Laned roadway" means a roadway which is divided into two (2) or more clearly marked lanes for vehicular traffic.

(f) "Through highway" means every highway or portion thereof at the entrances to which vehicular traffic from intersecting highways is required by law to stop before entering or crossing it and when stop signs are erected as provided in this act.

**History.** Acts 1937, No. 300, § 12; Pope's Dig., § 6670; Acts 1959, No. 307, § 4; A.S.A. 1947, § 75-412. **Meaning of "this act".** See note to § 27-49-201.

CASE NOTES

ANALYSIS

Parking Lots.  
Pavement.  
Sidewalk.  
Through Highway.

**Parking Lots.**

Inasmuch as a shopping center parking lot is not a highway, a person whose car collided with another vehicle as he was pulling out of a parking space could not be charged with the violation of failure to yield right-of-way. *Hartson v. City of Pine Bluff*, 270 Ark. 748, 606 S.W.2d 149 (1980).

**Pavement.**

Former provisions in § 27-51-1303 requiring 20 feet of pavement to remain clear and unobstructed opposite a standing vehicle were held to mean 20 feet of the paved or improved, or main traveled part of the highway, and not to mean 20 feet including the shoulder. *Waycaster v. Sorenson*, 124 F. Supp. 892 (W.D. Ark. 1954) (decision prior to 1959 amendment).

**Sidewalk.**

The phrase, "intended for pedestrian use," is merely descriptive and not directive, and thus this definition does not set out a rule for a pedestrian or motorist to



follow. *Williams v. First Sec. Bank*, 293 Ark. 388, 738 S.W.2d 99 (1987).

**Through Highway.**

In order to have a through highway at any particular intersection, there must be erected a stop sign at the entrance of the

intersection on the highway approaching the through highway. *Watkins v. Bright*, 225 Ark. 879, 286 S.W.2d 333 (1956).

**Cited:** *Glover v. Dixon*, 285 Ark. 140, 688 S.W.2d 930 (1985).

**27-49-213. Safety zones.**

“Safety zones” means the area or space officially set apart within a roadway for the exclusive use of pedestrians and which is protected or is so marked or indicated by adequate signs as to be plainly visible at all times while set apart as a safety zone.

**History.** Acts 1937, No. 300, § 15; Pope’s Dig., § 6673; A.S.A. 1947, § 75-415.

**27-49-214. Tires.**

(a) “Pneumatic tire” means every tire in which compressed air is designed to support the load.

(b) “Solid tire” means tire of rubber or other resilient material which does not depend upon compressed air for the support of the load.

(c) “Metal tire” means every tire the surface of which in contact with the highway is wholly or partly of metal or other hard nonresilient material.

**History.** Acts 1937, No. 300, § 5; Pope’s Dig., § 6663; A.S.A. 1947, § 75-405.

**27-49-215. Tractors.**

(a) “Truck tractor” means every motor vehicle designed and used primarily for drawing other vehicles and not constructed to carry a load other than a part of the weight of the vehicle and load so drawn.

(b) “Farm tractor” means every motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines, and other implements of husbandry.

(c) “Road tractor” means every motor vehicle designed and used for drawing other vehicles and not constructed to carry any load thereon either independently or any part of the weight of a vehicle or load so drawn.

**History.** Acts 1937, No. 300, § 3; Pope’s Dig., § 6661; A.S.A. 1947, § 75-403.

**CASE NOTES****Truck Tractor.**

A truck tractor operating without a trailer is still a truck, and not a passenger vehicle; hence its operation is governed by

the law relating to speed of trucks. *Rapert v. State*, 215 Ark. 768, 223 S.W.2d 192 (1949).

**27-49-216. Traffic.**

"Traffic" means pedestrians, ridden or herded animals, vehicles, streetcars, and other conveyances, either singly or together, while using any highway for purposes of travel.

**History.** Acts 1937, No. 300, § 18; Pope's Dig., § 6676; A.S.A. 1947, § 75-418.

**27-49-217. Traffic signals and devices.**

(a) "Official traffic control devices" means all signs, signals, markings, and devices not inconsistent with this act placed or erected by authority of a public body or official having jurisdiction for the purpose of regulating, warning, or guiding traffic.

(b) "Official traffic control signal" means any device, whether manually, electrically, or mechanically operated, by which traffic is alternately directed to stop and to proceed.

(c) "Railroad sign or signal" means any sign, signal, or device erected by authority of a public body or official or by a railroad and intended to give notice of the presence of railroad tracks or the approach of a railroad train.

**History.** Acts 1937, No. 300, § 17; Pope's Dig., § 6675; A.S.A. 1947, § 75-417.

**Meaning of "this act".** See note to § 27-49-201.

**CASE NOTES****No Parking Signs.**

State Highway Commission has power to erect no parking signs on a part of the state highway system that is in city limits.

*Arkansas State Hwy. Comm'n v. City of Little Rock*, 227 Ark. 660, 300 S.W.2d 929 (1957).

**27-49-218. Trailers.**

(a) "Trailer" means every vehicle with or without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that no part of its weight rests upon the towing vehicle.

(b) "Semitrailer" means every vehicle with or without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that some part of its weight and that of its load rests upon or is carried by another vehicle.

**History.** Acts 1937, No. 300, § 4; Pope's Dig., § 6662; Acts 1959, No. 307, §§ 6, 7; A.S.A. 1947, § 75-404.

### **27-49-219. Vehicles.**

(a) "Vehicle" means every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, except devices moved by human power or used exclusively upon stationary rails or tracks.

(b) "Motor vehicles" means every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires but not operated upon rails.

(c) "Motorcycle" means every motor vehicle having a saddle for the use of the rider and designed to travel on not more than three (3) wheels in contact with the ground but excluding a tractor.

(d)(1) "Authorized emergency vehicle" means authorized emergency vehicles, which shall include:

(A) Motor vehicles used by state, county, or city and municipal police agencies, all of which shall be equipped with:

(i) Blue; or

(ii) Blue, red, or white rotating or flashing emergency lights;

(B)(i) Motor vehicles used by state, county, city, or municipal fire departments, motor vehicles owned and used by volunteer fire fighters while engaged in official duties, motor vehicles used by emergency medical services personnel licensed by the Department of Health or privately owned fire departments, and ambulances used solely for ambulance purposes that are approved as ambulances in accordance with state and federal highway safety standards, all of which shall be equipped with red rotating or flashing emergency lights.

(ii) Flashing emergency lights shall be used by volunteer fire fighters solely while engaged in the performance of duties as volunteer fire fighters and by emergency medical services personnel solely while engaged in the performance of duties with an ambulance service licensed by the department or an organized rescue squad or team;

(C)(i) Motor vehicles owned by state, county, and municipal agencies whose use is determined by the state agency to be required for dangerous or hazardous services and motor vehicles owned by public service corporations or private individuals whose use is determined by the Commissioner of Motor Vehicles, in accordance with regulations established by the commissioner to prevent abuses thereof, to be for extra hazardous service, may be equipped with amber flashing or rotating emergency or warning lights that shall not qualify them as emergency vehicles, but which shall during hazardous uses display their amber flashing or rotating emergency or warning lights in order that other motorists and the public may be aware of the special or hazardous use of the vehicles and shall exercise caution in



approaching the vehicles at all times while the amber flashing or rotating emergency or warning lights are in operation.

(ii) All hazardous service vehicles shall conform to regular traffic signals and speed limits during their operation; and

(D)(i) Motor vehicles utilized as wreckers or tow vehicles permitted or licensed under § 27-50-1203 may be equipped with amber flashing or rotating emergency or warning lights that shall not qualify them as emergency vehicles, but which shall only during hazardous uses display their amber flashing or rotating emergency or warning lights in order that other motorists and the public may be aware of the special or hazardous use of the wreckers or tow vehicles and exercise caution in approaching the wreckers or tow vehicles at all times while the amber flashing or rotating emergency or warning lights are in operation. Unless otherwise directed by a law enforcement officer, a wrecker or tow vehicle shall conform to regular signals and speed limits during its operation. In addition to amber flashing or rotating emergency or warning lights, wreckers or tow vehicles that respond to highway emergencies may be equipped with red flashing or rotating emergency or warning lights.

(ii) Red flashing or rotating emergency or warning lights on a wrecker or tow vehicle shall be operated only while the wrecker or tow vehicle is stopped on or within ten feet (10') of a public way and engaged in recovery or loading and hooking up an abandoned, an unattended, a disabled, or a wrecked vehicle. A wrecker or tow vehicle shall not operate forward-facing red flashing or rotating emergency or warning lights while underway, except as may be expressly authorized or required by law otherwise.

(2) It shall be unlawful to install, operate, or use any rotating or flashing light on any motor vehicle except as authorized in this subsection.

(e)(1) "School-bus" means a motor vehicle designed to carry more than ten (10) passengers:

(A) Owned by a public or a governmental agency or a private school and operated for the transportation of students to or from school or school-sponsored activities; or

(B) Privately owned and operated for compensation for the transportation of students to or from school or school-sponsored activities.

(2) A motor vehicle designed to carry more than twenty-five (25) passengers is exempt from this section if the motor vehicle is:

(A) Owned by a public or a governmental agency or a private school and operated for the transportation of students to or from school-sponsored activities but not used to transport students on any scheduled school bus route; or

(B) Privately owned and operated for compensation under contract to a school district and used for the transportation of students to or from school-sponsored activities.

**History.** Acts 1937, No. 300, § 2; Pope's Dig., § 6660; Acts 1973, No. 155, § 1; A.S.A. 1947, § 75-402; Acts 1993, No. 1010, § 2; 1995, No. 123, § 2; 1995, No. 753, § 1; 2007, No. 999, § 5; 2007, No. 1412, § 3; 2009, No. 689, § 20.

**A.C.R.C. Notes.** Pursuant to § 1-2-207, subsection (d) of this section is set out above as amended by Acts 1995, No. 753. Subsection (d) of this section was also amended by Acts 1995, No. 123 to read as follows:

"(d)(1) 'Authorized emergency vehicle' means authorized emergency vehicles which shall include:

"(A) Motor vehicles used by state, county, or city and municipal police agencies, all of which shall be equipped with blue rotating or flashing emergency lights;

"(B) Motor vehicles used by state, county, city, or municipal fire departments, motor vehicles owned and used by volunteer fire fighters while engaged in official duties, motor vehicles used by emergency medical technicians certified by the Department of Health or privately owned fire departments, and ambulances used solely for ambulance purposes which are approved as ambulances in accordance with state and federal highway safety standards, all of which shall be equipped with red rotating or flashing emergency lights. Flashing emergency lights as described in § 27-36-304 shall be used by volunteer fire fighters solely while engaged in the performance of duties as volunteer fire fighters and by emergency medical technicians solely while engaged in the performance of duties with an ambulance service licensed by the Department of Health or an organized rescue squad or team; and

"(C) Motor vehicles owned by state, county, and municipal agencies whose use is determined by the state agency to be required for dangerous or hazardous services and motor vehicles owned by public service corporations or private individuals whose use is determined by the Commissioner of Motor Vehicles, in accordance with regulations established by the commissioner to prevent abuses thereof, to be for extra hazardous service, may be equipped with amber flashing or rotating emergency or warning lights which shall not qualify it as an emergency vehicle, but which shall, during hazardous uses thereof, display its amber flashing or rotating emergency or warning light in order that other motorists and the public may be aware of the special or hazardous use of the vehicle and shall exercise caution in approaching the vehicle at all times while the amber flashing or rotating emergency or warning light is in operation. All hazardous service vehicles shall conform to regular traffic signals and speed limits during their operation.

"(2) It shall be unlawful to install, operate, or use any rotating or flashing light on any motor vehicle except as authorized in this subsection."

**Amendments.** The 2007 amendment by No. 999 rewrote (e).

The 2007 amendment by No. 1412 added (d)(1)(D) and made related changes.

The 2009 amendment, in (d)(1), subdivided (d)(1)(B) and (d)(1)(C), substituted "emergency medical services personnel" for "emergency medical technicians" in (d)(1)(B)(i) and (d)(1)(B)(ii), and made minor stylistic changes.

## CASE NOTES

### ANALYSIS

Constitutionality.  
Emergency Vehicles.  
Railroads.

### Constitutionality.

Former subsection (d) of this section, insofar as it authorized the chief of police of a city to designate ambulances and other vehicles as emergency vehicles, was unconstitutional as it failed to set standards to guide the chief of police in exer-

cising such authority. *Walden v. Hart*, 243 Ark. 650, 420 S.W.2d 868 (1967) (decision prior to 1973 amendment).

### Emergency Vehicles.

The mere fact that there was a police custom of calling a private ambulance at certain periods and that they treated such ambulances transporting a patient as emergency vehicles would not constitute any presumption that these ambulances had been so "designated or authorized" as required by this section. *Freeman v.*



Reeves, 241 Ark. 867, 410 S.W.2d 740 (1967) (decision prior to 1973 amendment).

**Railroads.**

Since devices used exclusively upon stationary rails or tracks are excepted from the term "vehicle," a pedestrian who slipped on a yellow substance similar to

feed while he was walking along a state highway railroad crossing could not base an action against the railroad upon § 27-35-110. *Bowie v. Missouri P. R. Co.*, 262 Ark. 793, 561 S.W.2d 314 (1978).

**Cited:** *Stuart v. State*, 263 Ark. 54, 563 S.W.2d 398 (1978); *Jones v. Parrish*, 330 Ark. 521, 954 S.W.2d 934 (1997).

## CHAPTER 50

### PENALTIES AND ENFORCEMENT

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. ENFORCEMENT GENERALLY.
3. OFFENSES AND PENALTIES GENERALLY.
4. ADDITIONAL PENALTY.
5. TRAFFIC CITATIONS.
6. ARREST AND RELEASE.
7. TRIAL AND JUDGMENT.
8. CONVICTIONS.
9. CENTRAL DRIVER'S RECORDS FILE.
10. REPORTS OF ACCIDENTS.
11. ABANDONED VEHICLES.
12. REMOVAL OF UNATTENDED OR ABANDONED VEHICLES.

#### SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

27-50-101. Operation of vehicles contrary to law prohibited.

SECTION.

27-50-102. Parties guilty of acts declared to be crimes.

**Effective Dates.** Acts 1937, No. 300, § 165: Mar. 23, 1937. Emergency clause provided: "It is hereby ascertained and determined by the General Assembly that the proper regulation of traffic on the highways is a necessary function of the State Government, and that the loss of life

and property under the present laws creates an emergency. Therefore, this act being necessary for the immediate preservation of the public peace, health and safety, shall go into effect immediately upon its passage and approval."

#### RESEARCH REFERENCES

**ALR.** Entrapment to commit traffic offense. 34 A.L.R.4th 1167.

Validity of routine roadblocks by state or local police for purpose of discovery of vehicular or driving violations. 37 A.L.R.4th 10.

**Am. Jur.** 7A Am. Jur. 2d, Auto., § 312 et seq., § 357 et seq.

**C.J.S.** 60 C.J.S., Motor Veh., § 25, § 135, § 164.1 et seq.

61A C.J.S., Motor Veh., § 588 et seq.

### 27-50-101. Operation of vehicles contrary to law prohibited.

It is unlawful for the owner or any other person employing or otherwise directing the driver of any vehicle to require or knowingly to permit the operation of the vehicle upon a highway in any manner contrary to law.

**History.** Acts 1937, No. 300, § 153; Pope's Dig., § 6813; A.S.A. 1947, § 75-1006.

### 27-50-102. Parties guilty of acts declared to be crimes.

(a) Every person who commits, attempts to commit, conspires to commit, or aids or abets in the commission of any act declared in this act to be a crime, whether individually or in connection with one (1) or more other persons or as principal, agent, or accessory, shall be guilty of the offense.

(b) Every person who falsely, fraudulently, forcibly, or willfully induces, causes, coerces, requires, permits, or directs another to violate any provision of this act is likewise guilty of the offense.

**History.** Acts 1937, No. 300, § 152; Pope's Dig., § 6812; A.S.A. 1947, § 75-1005.

**Meaning of "this act".** Acts 1937, No. 300, codified as §§ 6-19-111, 27-35-101 — 27-35-111, 27-36-101, 27-36-102, 27-36-201 — 27-36-204, 27-36-206 — 27-36-212, 27-36-213 [repealed], 27-36-214 — 27-36-220, 27-37-101, 27-37-102, 27-37-202 — 27-37-206, 27-37-301 — 27-37-303, 27-37-305, 27-37-401, 27-37-501, 27-37-502, 27-37-601, 27-49-101 — 27-49-112, 27-49-201 — 27-49-219, 27-50-101, 27-50-102, 27-50-304, 27-50-307, 27-50-308, 27-50-601 —

27-50-603, 27-50-604 [repealed], 27-50-605, 27-50-801 [repealed], 27-50-804, 27-50-805, 27-51-201, 27-51-202, 27-51-206, 27-51-208 — 27-51-211, 27-51-301 — 27-51-308, 27-51-401 — 27-51-405, 27-51-501 — 27-51-503, 27-51-601 — 27-51-603, 27-51-702, 27-51-703, 27-51-705, 27-51-801 — 27-51-803, 27-51-901 — 27-51-903, 27-51-1201 — 27-51-1205, 27-51-1301 — 27-51-1304, 27-51-1306 — 27-51-1308, 27-51-1401 — 27-51-1405, 27-52-101, 27-52-103 — 27-52-109, 27-53-101 — 27-53-105, 27-53-201 — 27-53-208.

## SUBCHAPTER 2 — ENFORCEMENT GENERALLY

#### SECTION.

27-50-201. Provisions deemed cumulative.

27-50-202. Arkansas Highway Police Division of the Arkansas State Highway and Transportation Department — Creation.

#### SECTION.

27-50-203. Appointment of director.

27-50-204. Division employees.

27-50-205. Power and authority of division.

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**Effective Dates.** Acts 1963, No. 125, § 8: July 1, 1963.

**27-50-201. Provisions deemed cumulative.**

This subchapter shall be cumulative to the laws in force relating to the functions and duties imposed upon the Department of Arkansas State Police under the provisions of Acts 1953, No. 122, and acts amendatory thereto. It shall also be cumulative to laws in effect which were in effect prior to the enactment of Acts 1953, No. 122, which imposed duties upon the Arkansas State Highway and Transportation Department and the Director of the Department of Finance and Administration, which were transferred to the Department of Arkansas State Police under the provisions of Acts 1953, No. 122, as amended.

**History.** Acts 1963, No. 125, § 2; A.S.A. 1947, § 75-1022.7.

**A.C.R.C. Notes.** Acts 1953, No. 122, is not codified.

**27-50-202. Arkansas Highway Police Division of the Arkansas State Highway and Transportation Department — Creation.**

The Arkansas Highway Police Division of the Arkansas State Highway and Transportation Department is created.

**History.** Acts 1963, No. 125, § 1; 1979, No. 720, § 1; A.S.A. 1947, §§ 75-1022.6, 75-1022.10; Acts 2007, No. 827, § 237.

**Publisher's Notes.** Acts 1963, No. 125, § 1, abolished the Weights and Standards Division of the Arkansas State Police and transferred all its powers, etc., to the Arkansas State Highway Department, which is now the Arkansas State Highway

and Transportation Department, to be performed by a division created within it.

Section 3 of that act provided for the transfer of all property used in the weight stations and patrol units.

**Amendments.** The 2007 amendment rewrote the section.

**Cross References.** Size and load regulations, § 27-35-101 et seq.

**27-50-203. Appointment of director.**

The State Highway Commission shall appoint a Director of the Arkansas Highway Police Division of the Arkansas State Highway and Transportation Department who shall serve at the pleasure of the commission.

**History.** Acts 1963, No. 125, § 4; A.S.A. 1947, § 75-1022.9.

**27-50-204. Division employees.**

(a)(1) The State Highway Commission shall establish rules and regulations governing employees of the Arkansas Highway Police Division of the Arkansas State Highway and Transportation Department.

(2) Employees of the Weights and Standards Division of the Arkansas State Police shall be eligible for employment under this subchapter without meeting the qualifications that may be established by the commission.



(b) Employees of the division may be required to wear some type of regalia or uniform identifying the employees as members of the division.

(c) All moneys coming into the hands of the employees in the enforcement of revenue laws shall be subject to regulations and procedures as the Director of the Department of Finance and Administration shall direct.

**History.** Acts 1963, No. 125, § 4; A.S.A. 1947, § 75-1022.9.

**Publisher's Notes.** Acts 1963, No. 125, § 1, abolished the Weights and Standards Division of the Arkansas State Police and

transferred all its powers, etc., to the Arkansas State Highway Department, which is now the Arkansas State Highway and Transportation Department, to be performed by a division created within it.

### 27-50-205. Power and authority of division.

(a) The Arkansas Highway Police Division of the Arkansas State Highway and Transportation Department shall have the power and authority to enforce all laws pertaining to the unlawful operation of motor vehicles over the highways of this state.

(b) This responsibility shall include, but not be limited to, a full responsibility along with the Department of Arkansas State Police and the Arkansas Transportation Commission [abolished] for enforcement of the Hazardous Materials Transportation Act of 1977, § 27-2-101 et seq., and the rules and regulations promulgated thereunder.

**History.** Acts 1979, No. 720, § 2; A.S.A. 1947, § 75-1022.11.

**Publisher's Notes.** Acts 1989 (1st Ex. Sess.), No. 153, § 2, provided, in part: "Wherever the words 'Arkansas Transportation Commission' or 'Transportation

Safety Agency' are used in any provision of the Code, the Acts of Arkansas or any statute, directive, rule or regulation, they shall be hereafter held and taken to mean the Arkansas State Highway and Transportation Department."

## SUBCHAPTER 3 — OFFENSES AND PENALTIES GENERALLY

### SECTION.

- 27-50-301. Applicability of criminal code.
- 27-50-302. Classification of traffic violations.
- 27-50-303. Violations involving drivers' licenses.
- 27-50-304. Penalties for misdemeanors.
- 27-50-305. Penalty for violation of 1959 amendatory act.
- 27-50-306. Additional penalties on conviction of moving traffic violations.

### SECTION.

- 27-50-307. Negligent homicide.
- 27-50-308. Reckless driving.
- 27-50-309. Racing or observing a drag race as a spectator on a public highway.
- 27-50-310. Use of officially designated school bus colors or words "school bus" unlawful.
- 27-50-311. Penalties for large trucks exceeding speed limits.



**Cross References.** Felonies, § 5-1-106.

Misdemeanors, § 5-1-107.

**Effective Dates.** Acts 1911, No. 134, § 20: effective on passage.

Acts 1937, No. 300, § 165: Mar. 23, 1937. Emergency clause provided: "It is hereby ascertained and determined by the General Assembly that the proper regulation of traffic on the highways is a necessary function of the State Government, and that the loss of life and property under the present laws creates an emergency. Therefore, this act being necessary for the immediate preservation of the public peace, health and safety, shall go into effect immediately upon its passage and approval."

Acts 1953, No. 135, § 4: Feb. 24, 1953. Emergency clause provided: "It has been found and is declared by the General Assembly of the State of Arkansas that a number of vehicles formerly used as school buses are now being used by private persons and are not being used in the transporting of children to and from schools and that these vehicles are painted a distinctive color used by schools for school buses, and/or have the words 'School Bus' marked thereon, therefore wrongfully causing motorists to believe these vehicles are school buses, and as a result causing the slowing and delay of traffic and endangering the safety of motorists. Therefore, an emergency is declared to exist, and this Act being necessary for the preservation of the public peace, health and safety shall take effect and be in force from and after the date of its passage and approval."

Acts 1955, No. 174, § 3: Mar. 8, 1955. Emergency clause provided: "It has been found and is declared by the General Assembly of the State of Arkansas that the crime of negligent homicide is a lesser degree of the crime of involuntary manslaughter; that this Act is necessary to include this in the criminal laws of this State. Therefore, an emergency is declared to exist, and this Act being necessary for the preservation of the public peace, health and safety, shall take effect and be in force from the date of its approval."

Acts 1955, No. 186, § 3: Mar. 10, 1955. Emergency clause provided: "It has been found and is declared by the General Assembly of Arkansas that general confu-

sion exists among the judges and attorneys of this State as to the law concerning reckless driving; that this Act seeks to clear up that confusion. Therefore, an emergency is declared to exist, and this Act being necessary for the preservation of the public peace, health and safety, shall take effect and be in force from the date of its approval."

Acts 1961, No. 143, § 2: approved Mar. 1, 1961. Emergency clause provided: "Whereas, the accident rate, as a result of traffic violations, is increasing and trial judges need adequate preventive restrictions to impose upon drivers, it is found that this Act is in the furtherance of the administration of justice and is necessary for the immediate preservation of the public peace, welfare, and safety, and an emergency is hereby declared and this Act shall be in force and effect from and after its passage."

Acts 1981, No. 918, § 3: Mar. 30, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that existing statutes establishing criminal penalties for hit and run accidents are conflicting and duplicating and that this Act is immediately necessary to eliminate such confusion. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1983, No. 549, § 19: Mar. 21, 1983. Emergency clause provided: "It is hereby found and determined by the Seventy-Fourth General Assembly that the act of driving a motor vehicle while under the influence of intoxicating alcoholic beverages or drugs constitutes a serious and immediate threat to the safety of all citizens of this State, and that increasing the penalty for this dangerous conduct may serve as a deterrent to such behavior. Further, it is found that increased income derived from the levying of such penalties can best be utilized to provide immediate alcohol and drug safety and rehabilitation and treatment programs both to prevent an increase in the use of intoxicating alcoholic beverages and drugs and to rehabilitate persons convicted of related offenses. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of

the public peace, health, and safety shall be in full force and effect from and after the date of its passage and approval.”

### **27-50-301. Applicability of criminal code.**

Any moving traffic law violation not enumerated in § 27-50-302 shall be known as a violation as defined in §§ 5-1-105 and 5-1-108, and shall be punishable as provided under § 5-4-201.

**History.** Acts 1977, No. 417, § 1; A.S.A. 1947, § 75-1053; Acts 1993, No. 403, § 25.

### **RESEARCH REFERENCES**

**U. Ark. Little Rock L.J.** Survey of Arkansas Law, Criminal Law, 1 U. Ark. Little Rock L.J. 153.

### **27-50-302. Classification of traffic violations.**

(a) The following traffic law violations shall be known as offenses and classified as indicated:

- (1) Racing on a public highway — Class A misdemeanor;
- (2) Reckless driving — Class B misdemeanor;
- (3) Driving with lights off to avoid detection, identification, or apprehension — Class B misdemeanor;
- (4) Hazardous driving — Class C misdemeanor;
- (5) Leaving the scene of an accident involving property damage only — Class C misdemeanor;
- (6) Driving the wrong way on a one-way street — Class C misdemeanor;
- (7) Speeding in excess of fifteen miles per hour (15 m.p.h.) over the posted speed limit — Class C misdemeanor;
- (8) Using nitrous oxide in a motor vehicle or motorcycle on a street or highway as prohibited under § 27-37-803 — Class C misdemeanor; and
- (9) Observing a drag race as a spectator on a public highway — Class B misdemeanor.

(b) More than three (3) violations in a twelve-month period — Class C misdemeanor.

**History.** Acts 1977, No. 417, § 3; 1981, No. 918, § 2; 1983, No. 549, § 18; 1985, No. 1078, § 2; A.S.A. 1947, § 75-1055; Acts 2005, No. 1568, § 2; 2009, No. 826, § 1.

redesignated the introductory language as (a), inserted “public” in (a)(1), substituted “Driving the wrong way” for “Wrong way” in (a)(6), inserted (a)(9), and redesignated former (9) as (a)(10).

**Amendments.** The 2009 amendment



**RESEARCH REFERENCES**

**U. Ark. Little Rock L.J.** Legislation of the 1983 General Assembly, Criminal Law, 6 U. Ark. Little Rock L.J. 613.

**CASE NOTES****Legislative Intent.**

The legislature has always considered DWI to be a traffic offense and only removed it from the list of traffic offenses under this section when DWI became the

focus of an entire act within itself. *Hill v. State*, 315 Ark. 297, 868 S.W.2d 44 (1993).

**Cited:** *McKinney v. City of El Dorado*, 308 Ark. 284, 824 S.W.2d 826 (1992).

**27-50-303. Violations involving drivers' licenses.**

The following nonmoving traffic law violations shall be classified as follows:

(1) Possession of a counterfeit driver's license or a deliberately altered driver's license — Class A misdemeanor; and

(2) Making a false statement to the Director of the Department of Finance and Administration to obtain a driver's license — Class A misdemeanor as defined under § 5-53-103 of the Arkansas Criminal Code.

**History.** Acts 1977, No. 417, §§ 2, 4; A.S.A. 1947, §§ 75-1054, 75-1056.

**CASE NOTES**

**Cited:** *McKinney v. City of El Dorado*, 308 Ark. 284, 824 S.W.2d 826 (1992).

**27-50-304. Penalties for misdemeanors.**

(a) It is a misdemeanor for any person to violate any of the provisions of this act unless the violation is by this act or other law of this state declared to be a felony.

(b) Every person convicted of a misdemeanor for a violation of any of the provisions of this act for which another penalty is not provided shall:

(1) For a first conviction, be punished by a fine of not more than one hundred dollars (\$100) or by imprisonment for not more than ten (10) days;

(2) For a second conviction within one (1) year thereafter, the person shall be punished by a fine of not more than two hundred dollars (\$200) or by imprisonment for not more than twenty (20) days, or by both fine and imprisonment; and

(3) Upon a third or subsequent conviction within one (1) year after the first conviction, the person shall be punished by a fine of not more than five hundred dollars (\$500) or by imprisonment for not more than six (6) months, or by both fine and imprisonment.

**History.** Acts 1937, No. 300, § 151; Pope's Dig., § 6810; A.S.A. 1947, § 75-1004.

**Meaning of "this act".** Acts 1937, No. 300, codified as §§ 6-19-111, 27-35-101 — 27-35-111, 27-36-101, 27-36-102, 27-36-201 — 27-36-204, 27-36-206 — 27-36-212, 27-36-213 [repealed], 27-36-214 — 27-36-220, 27-37-101, 27-37-102, 27-37-202 — 27-37-206, 27-37-301 — 27-37-303, 27-37-305, 27-37-401, 27-37-501, 27-37-502, 27-37-601, 27-49-101 — 27-49-112, 27-49-201 — 27-49-219, 27-50-101, 27-50-102, 27-50-304, 27-50-307, 27-50-308, 27-50-601 —

27-50-603, 27-50-604 [repealed], 27-50-605, 27-50-801 [repealed], 27-50-804, 27-50-805, 27-51-201, 27-51-202, 27-51-206, 27-51-208 — 27-51-211, 27-51-301 — 27-51-308, 27-51-401 — 27-51-405, 27-51-501 — 27-51-503, 27-51-601 — 27-51-603, 27-51-702, 27-51-703, 27-51-705, 27-51-801 — 27-51-803, 27-51-901 — 27-51-903, 27-51-1201 — 27-51-1205, 27-51-1301 — 27-51-1304, 27-51-1306 — 27-51-1308, 27-51-1401 — 27-51-1405, 27-52-101, 27-52-103 — 27-52-109, 27-53-101 — 27-53-105, 27-53-201 — 27-53-208.

### CASE NOTES

#### Reckless Driving.

Reckless driving is a misdemeanor. Doty v. Goodwin, 246 Ark. 149, 437 S.W.2d 233 (1969).

#### 27-50-305. Penalty for violation of 1959 amendatory act.

(a) Any person violating any of the provisions of this act shall be guilty of a misdemeanor, unless the violation is by this act or other law of this state declared to be a felony.

(b) Upon conviction, an offender shall be punished:

(1) For a first conviction, by a fine of not more than one hundred dollars (\$100) or by imprisonment for not more than ten (10) days;

(2) For a second conviction within one (1) year thereafter, by a fine of not more than two hundred dollars (\$200) or by imprisonment for not more than twenty (20) days, or by both fine and imprisonment; and

(3) For a third or subsequent conviction within one (1) year after the first conviction, by a fine of not more than five hundred dollars (\$500) or by imprisonment for not more than six (6) months, or by both fine and imprisonment.

**History.** Acts 1959, No. 307, § 54; A.S.A. 1947, § 75-1037.

**Meaning of "this act".** Acts 1959, No. 307, codified as §§ 16-58-121, 27-14-207, 27-14-212, 27-14-801 — 27-14-804, 27-14-909, 27-14-913, 27-14-2002, 27-14-2003, 27-16-204, 27-16-303, 27-16-602, 27-16-604, 27-16-802, 27-16-803 [repealed], 27-16-906, 27-16-909, 27-19-203, 27-19-605, 27-19-701, 27-19-709, 27-19-713, 27-19-

717, 27-35-101 — 27-35-103, 27-35-111, 27-36-204, 27-36-208, 27-36-209, 27-36-214 — 27-36-219, 27-37-202, 27-37-205, 27-37-206, 27-37-501, 27-37-502, 27-49-212, 27-49-218, 27-50-305, 27-51-201, 27-51-208, 27-51-209, 27-51-307, 27-51-308, 27-51-503, 27-51-601, 27-51-702, 27-51-703, 27-51-705, 27-51-1002, 27-51-1301, 27-51-1303, 27-51-1306, 27-51-1307, 27-52-107.

### CASE NOTES

**Cited:** United States v. Hollman, 541 F.2d 196 (8th Cir. 1976); Gran v. Hale, 294 Ark. 563, 745 S.W.2d 129 (1988).

**27-50-306. Additional penalties on conviction of moving traffic violations.**

In addition to the penalties provided by law, after the conviction of any person for any moving traffic violation, the trial judge or magistrate may in disposition and assessing penalty consider the previous traffic conviction record and impose the following penalties, or combination of penalties:

(1) Suspend the driver's license for any period not to exceed one (1) year; or

(2) Suspend the driver's license for any period, not to exceed one (1) year, but grant a conditional permit to drive during the suspension, by imposing conditions and restrictions not to exceed one (1) year defining circumstances under which the violator will be allowed to drive while under suspension; or

(3) Require the attendance of the violator at a driver's training school; or

(4) Require the violator to retake the driver's test, or furnish proof of adequate sight or hearing necessary for driving, or produce proof of physical or mental capacity and ability to drive; or

(5) Require minors to write themes or essays on safe driving; or

(6) Place a minor under probationary conditions, as determined by the court in its reasonable discretion, designed as a reasonable and suitable preventative and educational safeguard to prevent future traffic violations by the minor.

**History.** Acts 1961, No. 143, § 1; A.S.A. 1947, § 75-1038a.

**CASE NOTES****Driving While Intoxicated.**

The court had authority to suspend the defendant's driver's license where the defendant was convicted on driving while intoxicated and speeding, notwithstanding the contention that, pursuant to § 5-65-104, only the Department of Finance

and Administration can suspend a license for driving while intoxicated, since the court still had authority to suspend the defendant's driver's license for moving traffic violations. *Cook v. State*, 333 Ark. 22, 968 S.W.2d 589 (1998).

**27-50-307. Negligent homicide.**

(a) When the death of any person ensues within one (1) year as a proximate result of injury received by the driving of any vehicle in reckless or wanton disregard of the safety of others, the person operating the vehicle shall be guilty of negligent homicide.

(b) The commissioner shall revoke the operator's or chauffeur's license of any person convicted of negligent homicide under the provisions of this section.

(c) The offense of negligent homicide shall be included in and be a lesser degree of the offense of involuntary manslaughter.



**History.** Acts 1937, No. 300, § 48; Pope's Dig., § 6706; Acts 1955, No. 174, § 1; A.S.A. 1947, § 75-1001.

**Publisher's Notes.** The former offense

of involuntary manslaughter is now included in manslaughter and negligent homicide, §§ 5-10-104 and 5-10-105, respectively.

## RESEARCH REFERENCES

**Ark. L. Rev.** Negligent Homicide, 9 Ark. L. Rev. 388.

**Criminal Law — Negligent Homicide Statutes — Requirement of Mens Rea**, 11 Ark. L. Rev. 448.

**U. Ark. Little Rock L.J.** Survey of Arkansas Law, Criminal Law, 1 U. Ark. Little Rock L.J. 153.

## CASE NOTES

### ANALYSIS

Alternative Means of Prosecution.

Elements of Offense.

Evidence.

Wrongful Death Actions.

### Alternative Means of Prosecution.

Where party was killed as the result of the reckless driving of an automobile by the defendant, the defendant was properly charged with statutory offense of involuntary manslaughter, despite this section governing automobile homicide, as state could base its prosecution for negligent death under either statute. *Campbell v. State*, 215 Ark. 785, 223 S.W.2d 505 (1949).

If homicide resulted from operation of vehicle in a reckless or wanton disregard of safety of others, prosecution could have been under this section or involuntary manslaughter statute; but if homicide resulted from operation of vehicle in a willful disregard of safety of others, then offense could not have been negligent homicide but must have been at least involuntary manslaughter. *Bentley v. State*, 252 Ark. 642, 480 S.W.2d 346 (1972).

### Elements of Offense.

For conviction under this section, it is not necessary that the defendant be guilty of willful or wanton negligence, but only that he be guilty of a reckless or wanton disregard for the safety of others. *Baker v. State*, 237 Ark. 862, 376 S.W.2d 673 (1964).

### Evidence.

Where conviction for negligent homicide is based on surmise and conjecture and when the physical evidence at the scene of the accident is consistent with most any hypothesis, the judgment must be reversed. *Ayers v. State*, 247 Ark. 174, 444 S.W.2d 695 (1969).

### Wrongful Death Actions.

Trial court did not err by granting a motion in limine to prohibit introduction of evidence, in wrongful death action brought after one passenger died in automobile accident, that both drivers pleaded nolo contendere to the charge of negligent homicide under this section and § 27-50-804 resulting from the collision. *Patterson v. Odell*, 322 Ark. 394, 909 S.W.2d 648 (1995).

**Cited:** *Rickett v. Hayes*, 251 Ark. 395, 473 S.W.2d 446 (1971).

## 27-50-308. Reckless driving.

(a) Any person who drives any vehicle in such a manner as to indicate a wanton disregard for the safety of persons or property is guilty of reckless driving.

(b)(1)(A) If physical injury to a person results, every person convicted of reckless driving shall be punished upon a first conviction by imprisonment for a period of not less than thirty (30) days nor more than ninety (90) days or by a fine of not less than one hundred dollars

(\$100) nor more than one thousand dollars (\$1,000), or by both such fine and imprisonment.

(B) Otherwise, every person convicted of reckless driving shall be punished upon a first conviction by imprisonment for a period of not less than five (5) days nor more than ninety (90) days or a fine of not less than twenty-five dollars (\$25.00) nor more than five hundred dollars (\$500), or by both such fine and imprisonment.

(2)(A) For a second or subsequent offense occurring within three (3) years of the first offense, every person convicted of reckless driving shall be punished by imprisonment for not less than thirty (30) days nor more than six (6) months or by a fine of not less than five hundred dollars (\$500) nor more than one thousand dollars (\$1,000), or by both such fine and imprisonment.

(B) However, if the second or subsequent offense involves physical injury to a person, the person convicted shall be punished by imprisonment for not less than sixty (60) days nor more than one (1) year or by a fine of not less than five hundred dollars (\$500) nor more than one thousand dollars (\$1,000), or by both such fine and imprisonment.

**History.** Acts 1937, No. 300, § 50; § 1; A.S.A. 1947, § 75-1003; Acts 1987, Pope's Dig., § 6708; Acts 1955, No. 186, No. 258, § 1.

### RESEARCH REFERENCES

**Ark. L. Rev.** Reckless Driving, 9 Ark. L. Rev. 388.      Arkansas Law, Criminal Law, 1 U. Ark. Little Rock L.J. 153.

**U. Ark. Little Rock L.J.** Survey of

### CASE NOTES

#### ANALYSIS

**Evidence.**

**Lesser Included Offenses.**

**Misdemeanor.**

#### **Evidence.**

Where the defendant in an action for damages pleads guilty to a criminal charge of reckless driving, it is not error to introduce testimony as to such plea as a declaration against interest of such defendant. *Miller v. Blanton*, 213 Ark. 246, 210 S.W.2d 293, 3 A.L.R.2d 203 (1948).

#### **Lesser Included Offenses.**

First-degree battery and aggravated assault are not lesser-included offenses of

reckless driving and are not the same offenses for double jeopardy purposes. *Sherman v. State*, 326 Ark. 153, 931 S.W.2d 417 (1996).

#### **Misdemeanor.**

Reckless driving is a misdemeanor. *Doty v. Goodwin*, 246 Ark. 149, 437 S.W.2d 233 (1969).

**Cited:** *Palmer v. Myklebust*, 244 Ark. 5, 424 S.W.2d 169 (1968); *Wright v. Burton*, 279 Ark. 1, 648 S.W.2d 794 (1983).

**27-50-309. Racing or observing a drag race as a spectator on a public highway.**

(a) As used in this section:

(1) “Drag race” means:

(A) The operation of two (2) or more motor vehicles from a point side-by-side at accelerating speeds in a competitive attempt to outdistance each other; and

(B) The operation of one (1) or more motor vehicles over a common selected course, from the same point to the same point, for the purpose of comparing the relative speeds or power of acceleration of the motor vehicle or motor vehicles within a certain distance or time limit;

(2) “Public highway” means a public road, county road, city street, or any paved or unpaved roadway that is owned or maintained by a public entity or municipality; and

(3) “Race” means the operation or use of one (1) or more motor vehicles traveling with excessive or at dangerous speeds in an attempt to:

(A) Outgain or outdistance another motor vehicle or motor vehicles;

(B) Arrive at a given destination ahead of another motor vehicle or motor vehicles; or

(C) Test the physical stamina or endurance of drivers over long-distance driving routes.

(b)(1) A person commits the crime of racing on a public highway if he or she knowingly:

(A) Commits a violation of § 27-50-302(a)(1)-(9) and operates a motor vehicle in a race or drag race on a public highway;

(B) Participates in, promotes, solicits, or collects moneys at any location for any race or drag race on a public highway; or

(C) Rides as a passenger in or on a motor vehicle in any race or drag race on a public highway.

(2) Racing on a public highway is a Class A misdemeanor.

(c)(1) A person commits the crime of observing a drag race as a spectator on a public highway if he or she with the purpose to observe a drag race on a public highway:

(A) Is knowingly present at and purposely observes the drag race or the preparation for the drag race; and

(B) Purposely demonstrates through active encouragement, assistance, facilitation, urging, or a request that the drag race commence.

(2) Observing a drag race is a Class B misdemeanor.

**History.** Acts 1911, No. 134, § 11, p. 94; C. & M. Dig., § 7427; Pope’s Dig., § 6639; Acts 1965, No. 100, § 1; A.S.A. 1947, § 75-603; Acts 2005, No. 1568, § 3; 2009, No. 826, § 2.

**Amendments.** The 2009 amendment rewrote the section.

**Cross References.** Accidents, § 27-53-101 et seq.



**RESEARCH REFERENCES**

**U. Ark. Little Rock L.J.** Survey of Arkansas Law, Criminal Law, 1 U. Ark. Little Rock L.J. 153.

**27-50-310. Use of officially designated school bus colors or words "school bus" unlawful.**

(a) It shall be unlawful for any person to operate a motor vehicle that formerly was but is not now a school bus or a motor vehicle similar in shape and form to a school bus upon the public highways and roads of this state when the vehicle is painted with the officially designated school bus colors or has the words "SCHOOL BUS" marked thereon.

(b) Any person violating the provisions of subsection (a) shall be deemed guilty of a misdemeanor and upon conviction shall be fined in any sum not less than twenty-five dollars (\$25.00) and not more than one hundred dollars (\$100).

**History.** Acts 1953, No. 135, §§ 1, 2; A.S.A. 1947, §§ 75-1032, 75-1033.

**27-50-311. Penalties for large trucks exceeding speed limits.**

(a) The General Assembly has determined that the operation of trucks, as defined in subsection (b) of this section, at high speeds creates a unique threat to the public safety of Arkansas motorists and causes substantial damage to Arkansas highways. Through enacting this section, it is the intent of the General Assembly to deter such unsafe and damaging driving practices by providing severe penalties against those persons who are determined to be guilty of violating this section.

(b) For purposes of this section, the term "truck" means any vehicle with a registered gross weight of at least twenty thousand pounds (20,000 lbs.).

(c) When the operator of any truck as defined in subsection (b) of this section pleads guilty or nolo contendere to or forfeits bond for or is found guilty of operating such vehicle at a speed in excess of five miles per hour (5 m.p.h.) over the posted or legal speed limit, the operator shall be fined fifty dollars (\$50.00) for each mile per hour in excess of five miles per hour (5 m.p.h.) over the posted or legal speed limit.

(d) The fine provided for in this section is in addition to all other fines and court costs levied for the violation.

(e)(1) The circuit, district, and city courts levying and collecting the fines prescribed by this section may retain two percent (2%) of the fines as a collection fee. Any collection fee retained, pursuant to state accounting laws, shall be deposited by the tenth day of each month in the court automation fund as established by § 16-13-704 of the city or county to be used solely for court-related technology.

(2) After deducting the collection fee provided in subdivision (e)(1) of this section, the court shall remit the balance of the fines levied and

collected under this section by the tenth day of each month to the Administration of Justice Fund Section of the Office of Administrative Services of the Department of Finance and Administration, on a form provided by that office, for deposit as general revenues of the state.

(f) The provisions of this section shall only apply to the operation of trucks on interstate highways or state highways that have a posted speed limit for trucks different from the posted speed limit for other motor vehicles.

**History.** Acts 1999, No. 1345, §§ 1-5; 2001, No. 740, § 1; 2001, No. 1809, § 7; 2003, No. 1765, § 37.

#### SUBCHAPTER 4 — ADDITIONAL PENALTY

##### SECTION.

27-50-401. [Repealed.]

27-50-402. Penalty mandatory.

27-50-403. Applicable only to certain cities.

27-50-404. Disposition of funds.

27-50-405. Penalties to be remitted monthly.

##### SECTION.

27-50-406. Failure to collect and remit.

27-50-407. Annual audit.

27-50-408. Fines for moving traffic violations in a highway work zone.

**A.C.R.C. Notes.** References to “this subchapter” in §§ 27-50-402 — 27-50-407 may not apply to § 27-50-408 which was enacted subsequently.

**Publisher’s Notes.** Acts 1989, No. 935, § 5, provided: “It is the express intention of this act to authorize cities which have adopted coverage under LOPFI to collect the same three dollar (\$3.00) fine on moving traffic violations, previously authorized for the benefit of Policemen’s Pension and Relief Funds. In any municipality with a Policemen’s Pension and Relief Fund, monies collected shall be deposited into the Relief Fund and not be used to defray the Arkansas Local Police and Fire Retirement System cost so long as there are active members in the Relief Fund.”

**Effective Dates.** Acts 1963, No. 257, § 8: Mar. 18, 1963. Emergency clause provided: “Whereas, the General Assembly recognizes the appalling increase in deaths, injuries and property loss brought about by motor vehicle traffic upon the highways and city streets of this state and of violations of criminal laws of this state;

and, whereas, the General Assembly further recognizes that vigorous enforcement of the traffic laws and regulations and of the criminal laws can go far in reducing the number of automobile accidents and the crime ratio; and whereas, the General Assembly recognizes the recruitment, training and retention of competent police personnel in the respective cities of this state will go far in providing a competent police force to enforce the traffic laws and regulations of this state, and also the criminal laws and, whereas, the providing of an adequate pension and relief plan in the respective cities of this state will go far in encouraging the recruitment and retention of qualified police personnel, and whereas, the General Assembly recognizes that there is an immediate need for the providing of additional funds for proper operation of such policemen’s funds, now, therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”



**27-50-401. [Repealed.]**

**Publisher's Notes.** This section, concerning penalty collected on convictions of moving traffic violation or crime, was repealed by Acts 1995, No. 1256, § 20, as amended by Acts 1995 (1st Ex. Sess.), No.

13, § 4. The section was derived from Acts 1963, No. 257, § 1; 1965, No. 34, § 1; 1983, No. 849, § 1; A.S.A. 1947, § 75-1039; Acts 1991, No. 904, §§ 17, 20.

**27-50-402. Penalty mandatory.**

The penalty provided in § 27-50-401 [repealed] is mandatory and shall be levied in connection with each conviction as provided in that section, and no court shall have the power or authority to suspend, postpone, or forgive the collection of any penalty as provided in this subchapter.

**History.** Acts 1963, No. 257, § 2; A.S.A. 1947, § 75-1040.

**27-50-403. Applicable only to certain cities.**

The penalties as provided in § 27-50-401 [repealed], and the collection thereof, shall only apply to those cities of the first and second class that provide retirement coverage to certified police personnel under provisions of Arkansas law establishing the policemen's pension and relief fund, and those cities which have adopted coverage for certified police personnel under the Arkansas Local Police and Fire Retirement System, since July 1, 1981.

**History.** Acts 1963, No. 257, § 2; A.S.A. 1947, § 75-1040; Acts 1989, No. 935, § 1.

**27-50-404. Disposition of funds.**

All penalties collected under the provisions of this subchapter shall be deemed to be collected for the benefit of employees of the policemen's pension and relief fund or for payments to fund the employer's share of retirement cost for certified police personnel, covered under the Arkansas Local Police and Fire Retirement System.

**History.** Acts 1963, No. 257, § 3; A.S.A. 1947, § 75-1041; Acts 1989, No. 935, § 2.

**27-50-405. Penalties to be remitted monthly.**

All penalties collected under the provisions of this subchapter shall be remitted by the collecting officials to the city treasurer, city clerk, or city recorder for deposit into the policemen's pension and relief fund or for deposit into the Arkansas Local Police and Fire Retirement System subsidy account or city general fund, on or before the fifth day of the month following the month of collection thereof in each city of the first or second class providing retirement coverage to certified police personnel.



**History.** Acts 1963, No. 257, § 4; A.S.A. 1947, § 75-1042; Acts 1989, No. 935, § 3.

#### **27-50-406. Failure to collect and remit.**

(a) Any official charged with the duty of collecting any of the penalties as prescribed in this subchapter shall be guilty of misfeasance in office and shall be subject to removal from office upon failure to collect the penalties and remit them to the city treasurer, city clerk, or city recorder in each respective city of the first and second class of this state that provides retirement coverage to certified police personnel under the policemen's pension and relief fund or the Arkansas Local Police and Fire Retirement System since July 1, 1981.

(b) In addition, he or she shall be liable on his or her official bond for any penalties which are not collected or remitted as required in this subchapter.

**History.** Acts 1963, No. 257, § 5; A.S.A. 1947, § 75-1043; Acts 1989, No. 935, § 4.

#### **27-50-407. Annual audit.**

The records of all officials charged with the duty of collecting penalties as prescribed in this subchapter shall be audited annually by the Director of the Department of Finance and Administration or his or her designated agents.

**History.** Acts 1963, No. 257, § 5; A.S.A. 1947, § 75-1043.

#### **27-50-408. Fines for moving traffic violations in a highway work zone.**

(a) As used in this section, unless the context otherwise requires:

(1) "Construction personnel" means employees of the Arkansas State Highway and Transportation Department or the counties or the municipalities of this state or any contractors of the State Highway Commission or the counties or municipalities;

(2) "Conviction" means a person who is charged with a violation of law and who pleads guilty or nolo contendere, is found guilty, or forfeits a bond in lieu of a plea or trial;

(3) "Department" means the Arkansas State Highway and Transportation Department; and

(4) "Highway work zone" means any area upon or adjacent to any highway, road, or street of this state where construction, reconstruction, maintenance, or any other type of work is being performed or is in progress by employees of the Arkansas State Highway and Transportation Department, the counties or the municipalities of this state, or any contractors of the State Highway Commission or the counties or municipalities.

(b)(1)(A)(i) In addition to the fine otherwise provided by law, after the conviction of any person for any moving traffic violation committed while the person is driving through a highway work zone in this state and if construction personnel were present in the highway work zone when the offense occurred, the trial judge shall assess an additional fine equivalent to the fine imposed by law upon that person for committing a moving traffic violation in the highway work zone.

(ii) Equivalent additional court costs pursuant to § 16-10-305 shall not be assessed.

(B) Any bond posted pursuant to a charge of committing any moving traffic violation while in a highway work zone in this state shall include the additional equivalent fine in the amount of the bond otherwise required.

(2)(A) All fines collected by the county or city official, agency, or department designated pursuant to § 16-13-709 as primarily responsible for the collection of fines assessed in the circuit courts, district courts, or city courts of this state as a result of this section shall be paid by the collecting official to the county treasurer or town or city treasurer pursuant to law.

(B) All such amounts collected in circuit court shall be remitted to the county treasurer.

(C) All amounts collected pursuant to subdivision (b)(2)(A) of this section in district court shall be paid to the county or city treasurer pursuant to § 16-17-707.

(D) All amounts collected pursuant to subdivision (b)(2)(A) of this section in city court shall be paid to the treasurer of the town or city in which the city court is located.

(E) Amounts received by the county treasurer may be used for general county purposes, and amounts received by the city treasurer may be used for general city purposes.

(c)(1) The additional fines and penalties shall not be assessed unless signs, either permanent or temporary, were present at the time of the violation in advance of the highway work zone warning the traveling public that fines are double in highway work zones.

(2) The signs shall be located no greater than one (1) mile nor less than one thousand five hundred feet (1,500') in advance of the highway work zone.

(3) Furthermore, the additional fines or penalties for speeding shall not be assessed unless signs, either permanent or temporary, are posted in advance of the highway work zone indicating the maximum speed limit to be obeyed while traveling through the highway work zone.

(4)(A) All signs authorized by this section shall conform with the Manual on Uniform Traffic Control Devices.

(B) The counties and municipalities, prior to utilizing any such signs, shall seek the advice of the Arkansas State Highway and Transportation Department in order that the signs shall be uniform throughout the state.

(C) The Arkansas State Highway and Transportation Department is authorized to develop guidelines for the counties and municipalities to achieve uniformity.

(d) Nothing contained in this section shall be construed to abrogate any of the provisions of § 12-8-106 regarding the powers of the Department of Arkansas State Police.

(e) For purposes of this section, “moving traffic violation” shall include, but not be limited to:

- (1) Careless or prohibited driving;
- (2) Driving while intoxicated;
- (3) Underage driving under the influence;
- (4) Refusal to submit;
- (5) Leaving the scene of an accident;
- (6) Driving with lights off;
- (7) Driving on an expired, suspended, or revoked license;
- (8) Improper use of lighting equipment;
- (9) Failure to obey traffic control devices and signs;
- (10) Failure to operate a vehicle in accordance with the rules of the road;
- (11) Failure to stop and render aid;
- (12) Following too closely;
- (13) Driving the wrong way on a one-way street;
- (14) Hazardous driving;
- (15) Impeding the flow of traffic;
- (16) Improper backing;
- (17) Improper lane change;
- (18) Improper entrance or exit to avoid an intersection;
- (19) Improper towing;
- (20) Improper turning;
- (21) Passing a stopped school bus;
- (22) Racing on the highway;
- (23) Reckless driving; and
- (24) Exceeding the speed limit.

**History.** Acts 1995, No. 893, §§ 1-4; 2001, No. 1120, § 1; 2005, No. 1934, § 24.

**A.C.R.C. Notes.** The operation of this section may be affected by the enactment of Acts 1995, No. 1256.

References to “this subchapter” in §§ 27-50-402 — 27-50-407 may not apply to this section which was enacted subsequently.

## SUBCHAPTER 5 — TRAFFIC CITATIONS

### SECTION.

27-50-501. Uniform form to be used.

27-50-502. Promulgation of form.

27-50-503. Bulk purchasing authorized.

27-50-504. [Repealed.]

### SECTION.

27-50-505. Information from owner regarding operation of motor vehicle ticketed for violation.



**Effective Dates.** Acts 1969, No. 80, § 5: Feb. 21, 1969. Emergency clause provided: "It has been found by the General Assembly that state laws and municipal ordinances regulating motor vehicle operation are subject to constant abuse and flagrant violation by the lessees of automobile rental agencies and that this act is immediately necessary to alleviate this problem. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health, and safety, shall take effect and be in full force from and after its passage and approval."

Acts 1971, No. 250, § 5: July 1, 1971.

Acts 2005, No. 1675, § 4: Apr. 5, 2005. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that there is

confusion concerning the substance of the uniform traffic citation form; that the confusion has led to the dismissal of charges for traffic law violations; and that this act is immediately necessary to clarify that the uniform citation form may be altered to a substantially equivalent form for the use of law enforcement agencies. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

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### 27-50-501. Uniform form to be used.

Every law enforcement officer in this state who is authorized to issue citations for traffic law violations shall use a uniform traffic citation form prescribed by the Department of Arkansas State Police or a substantially equivalent form.

**History.** Acts 1971, No. 250, § 1; A.S.A. 1947, § 75-1050; Acts 2005, No. 1675, § 1.

**A.C.R.C. Notes.** Acts 2005, No. 1675,

§ 3, provided: "The provisions of this act shall apply to all previously issued citations for traffic law violations."

### 27-50-502. Promulgation of form.

(a)(1) The Department of Arkansas State Police is authorized and directed to promulgate a uniform traffic citation form.

(2) The form so promulgated or a substantially equivalent form shall be used exclusively by all law enforcement officers and agencies in this state in issuing citations for traffic law violations.

(b) Subsection (a) of this section shall not prohibit municipalities from promulgating uniform citation forms for use in enforcement of violations of their municipal code ordinances for offenses other than moving traffic law violations.

**History.** Acts 1971, No. 250, § 3; A.S.A. 1947, § 75-1052; Acts 2001, No. 331, § 1; 2001, No. 1484, § 1; 2005, No. 1675, § 2.

**A.C.R.C. Notes.** Acts 2005, No. 1675,

§ 3, provided: "The provisions of this act shall apply to all previously issued citations for traffic law violations."

**27-50-503. Bulk purchasing authorized.**

The Department of Arkansas State Police, in order to serve the convenience of local law enforcement officers, may establish procedures for the bulk purchasing of traffic forms to be sold to local law enforcement agencies at cost plus transportation charges in remitting them to local law enforcement agencies.

**History.** Acts 1971, No. 250, § 3; A.S.A. 1947, § 75-1052.

**27-50-504. [Repealed.]**

**Publisher's Notes.** This section, concerning the requirement that a copy of each citation be recorded, was repealed by Acts 2009, No. 456, § 18. The section was derived from Acts 1971, No. 250, § 2; A.S.A. 1947, § 75-1051; Acts 1995, No. 1296, § 95.

**27-50-505. Information from owner regarding operation of motor vehicle ticketed for violation.**

- (a) As used in this section, unless the context otherwise requires:
  - (1) "Automobile rental agency" means any person, group of persons, partnership, or corporation which owns one (1) or more automobiles and rents or leases one (1) or more for a monetary consideration; and
  - (2) "Police authority" means any municipal, county, or state police enforcement agency.
- (b) When the registered owner of a motor vehicle receives notice from any police authority that the motor vehicle has been ticketed for a violation of any state law or municipal ordinance regulating motor vehicle operation or usage, the registered owner shall provide the notifying police authority with such information as he or she has available regarding the operation of the vehicle at the time it was ticketed, within fourteen (14) days of receipt of notice therefor.
- (c) Failure or refusal of any registered owner of a motor vehicle to comply with the provisions of this section shall be a misdemeanor. Upon conviction, the person shall be subject to a fine of not less than five dollars (\$5.00) nor more than fifty dollars (\$50.00).

**History.** Acts 1969, No. 80, §§ 1-3; A.S.A. 1947, §§ 75-1047 — 75-1049.

**SUBCHAPTER 6 — ARREST AND RELEASE**

SECTION.	SECTION.
27-50-601. Procedure not exclusive.	27-50-604. [Repealed.]
27-50-602. Cases in which person arrested must be taken immediately before magistrate.	27-50-605. Appearance by counsel.
27-50-603. Release upon written promise to appear.	27-50-606. Deposit of operator's license in lieu of bond — Issuance of receipt.
	27-50-607. Receipt to serve as license — Forfeiture of license.



## SECTION.

27-50-608. Application for duplicate license after deposit unlawful.

27-50-609. Optional posting of bond or bond card — Exception.

27-50-610. Issuance of bond card.

## SECTION.

27-50-611. Right of qualified surety company to become surety with respect to guaranteed arrest bond certificates.

27-50-612. Guaranteed arrest bond certificates as cash bail.

**Effective Dates.** Acts 1937, No. 300, § 165; Mar. 23, 1937. Emergency clause provided: "It is hereby ascertained and determined by the General Assembly that the proper regulation of traffic on the highways is a necessary function of the State Government, and that the loss of life and property under the present laws creates an emergency. Therefore, this act being necessary for the immediate preservation of the public peace, health and safety, shall go into effect immediately upon its passage and approval."

Acts 1981, No. 499, § 3: Mar. 16, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that, in many instances, residents of this State who are involved in minor traffic law violations have their driver's licenses picked up by the police officer who makes the arrest or issues the traffic law violation citation, and said practice of picking up driver's licenses before the persons are brought to trial, results in considerable inconvenience to the motoring public, and is an undue impairment of a person's driving privileges prior to trial of

the alleged violation; and that the immediate passage of this Act is necessary to clarify the authority of law enforcement officers to pick up and withhold driver's licenses. Therefore, an emergency is hereby declared to exist, and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1989, No. 417, § 8: Mar. 8, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that the present laws on the regulation of the bail bond business and bail generally are confusing and have applied in an inconsistent manner; that there is an urgent need for the revision of laws pertaining to bail and that this Act is immediately necessary to eliminate deficiencies found in the present law. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

## 27-50-601. Procedure not exclusive.

The provisions of this subchapter shall govern all police officers in making arrests without a warrant for violations of this act for offenses committed in their presence, but the procedure prescribed in this subchapter shall not otherwise be exclusive of any other method prescribed by law for the arrest and prosecution of a person for an offense of like grade.

**History.** Acts 1937, No. 300, § 157; Pope's Dig., § 6817; A.S.A. 1947, § 75-1010.

**Meaning of "this act".** Acts 1937, No. 300, codified as §§ 6-19-111, 27-35-101 — 27-35-111, 27-36-101, 27-36-102, 27-36-201 — 27-36-204, 27-36-206 — 27-36-212,

27-36-213 [repealed], 27-36-214 — 27-36-220, 27-37-101, 27-37-102, 27-37-202 — 27-37-206, 27-37-301 — 27-37-303, 27-37-305, 27-37-401, 27-37-501, 27-37-502, 27-37-601, 27-49-101 — 27-49-112, 27-49-201 — 27-49-219, 27-50-101, 27-50-102, 27-50-304, 27-50-307, 27-50-308, 27-50-601 —



27-50-603, 27-50-604 [repealed], 27-50-605, 27-50-801 [repealed], 27-50-804, 27-50-805, 27-51-201, 27-51-202, 27-51-206, 27-51-208 — 27-51-211, 27-51-301 — 27-51-308, 27-51-401 — 27-51-405, 27-51-501 — 27-51-503, 27-51-601 — 27-51-603, 27-51-702, 27-51-703, 27-51-705, 27-51-801 — 27-51-803, 27-51-901 — 27-51-903, 27-51-1201 — 27-51-1205, 27-51-1301 — 27-51-1304, 27-51-1306 — 27-51-1308, 27-51-1401 — 27-51-1405, 27-52-101, 27-52-103 — 27-52-109, 27-53-101 — 27-53-105, 27-53-201 — 27-53-208.

### **27-50-602. Cases in which person arrested must be taken immediately before magistrate.**

Whenever any person is arrested for any violation of this act punishable as a misdemeanor, the arrested person shall be immediately taken before a magistrate or other proper officer within the county in which the offense charged is alleged to have been committed and who has jurisdiction of the offense and is nearest or most accessible with reference to the place where the arrest is made, in any of the following cases:

(1) When a person arrested demands an immediate appearance before a magistrate;

(2) When the person is arrested and charged with an offense under this act causing or contributing to an accident resulting in injury or death to any person;

(3) When the person is arrested upon a charge of negligent homicide;

(4) When the person is arrested upon a charge of driving while under the influence of intoxicating liquor or narcotic drugs;

(5) When the person is arrested upon a charge of failure to stop in the event of an accident causing death, personal injuries, or damage to property; or

(6) In any other event when the person arrested refuses to give his written promise to appear in court as provided.

**History.** Acts 1937, No. 300, § 154; Pope's Dig., § 6814; A.S.A. 1947, § 75-1007. **Meaning of "this act".** See note to § 27-50-601.

### **CASE NOTES**

**Cited:** *Hudgens v. State*, 324 Ark. 169, 919 S.W.2d 939 (1996).

### **27-50-603. Release upon written promise to appear.**

(a) Whenever a person is arrested for any violation of this act punishable as a misdemeanor and the person is not immediately taken before a magistrate as required, then the arresting officer may prepare in duplicate written notice to appear in court containing:

(1) The name and address of the person;

(2) The license number of his or her vehicle, if any;

(3) The offense charged; and

(4) The time and place where the person shall appear in court, and if the officer is a bonded officer, he or she may require the person to post a bail bond and give receipt therefor.

(b) The time specified to appear must be at least five (5) days after the arrest unless the person arrested shall demand an earlier hearing.

(c) The place specified to appear must be before a magistrate within the township or county in which the offense charged is alleged to have been committed and who has jurisdiction of the offense.

(d)(1) The arrested person in order to secure release, as provided in this section, must give his or her written promise so to appear in court by signing in duplicate the written notice prepared by the arresting officer or post a bail bond as may be required by the arresting officer.

(2) The original of the notice to appear and of the receipt for bail shall be retained by the officer, and the copy of each delivered to the person arrested. Thereupon, the officer shall forthwith release the person arrested from custody.

(e) Any officer violating any of the provisions of this section shall be guilty of misconduct in office and shall be subject to removal from office.

**History.** Acts 1937, No. 300, § 155; **Meaning of "this act".** See note to Pope's Dig., § 6815; Acts 1961, No. 446, § 27-50-601.  
§ 1; A.S.A. 1947, § 75-1008.

#### CASE NOTES

**Cited:** Russ v. Ratliff, 538 F.2d 799 (8th Cir. 1976); Thompson v. City of Little Rock, 264 Ark. 213, 570 S.W.2d 262 (1978); Brenneman v. State, 264 Ark. 460, 573 S.W.2d 47 (1978); Hudgens v. State, 324 Ark. 169, 919 S.W.2d 939 (1996).

#### 27-50-604. [Repealed.]

**Publisher's Notes.** This section, concerning violation of promise to appear, was repealed by Acts 2009, No. 633, § 23. The section was derived from Acts 1937, No. 300, § 156; Pope's Dig., § 6816; A.S.A. 1947, § 75-1009.

#### 27-50-605. Appearance by counsel.

A written promise to appear in court may be complied with by an appearance by counsel.

**History.** Acts 1937, No. 300, § 156; Pope's Dig., § 6816; A.S.A. 1947, § 75-1009.

#### 27-50-606. Deposit of operator's license in lieu of bond — Issuance of receipt.

(a) Every person who is arrested for a violation of a traffic law, rule, or regulation punishable as a misdemeanor, who is not permitted to appear for trial on his or her own recognizance may in lieu of posting bond be admitted to bail upon depositing his or her current motor vehicle operator's or chauffeur's license.

(b)(1) If the person is admitted to bail by depositing his or her current motor vehicle operator's or chauffeur's license with the arresting officer or clerk of the court, an official receipt shall be issued for the license, which shall be upon a form approved by the Director of the Office of Driver Services of the Department of Finance and Administration.

(2) The receipt shall serve in lieu of the operator's or chauffeur's license for the period of time and under the conditions provided in § 27-50-607.

(c) The motor vehicle operator's or chauffeur's license deposited as bail shall be retained by the clerk of the court before which the person is cited to appear for trial upon the charge.

**History.** Acts 1973, No. 246, § 1; A.S.A. 1947, § 75-1008.1.

### CASE NOTES

**Cited:** *Hudgens v. State*, 324 Ark. 169, 919 S.W.2d 939 (1996).

### **27-50-607. Receipt to serve as license — Forfeiture of license.**

(a) The official receipt received from the arresting officer shall serve in lieu of a driver's or operator's license for a time not in excess of twenty (20) days.

(b) If a defendant posts bail under the provisions of §§ 27-50-606 — 27-50-608 and upon an appearance to answer the charge or upon electing to plead guilty, the defendant's operator's or chauffeur's license shall be returned to him or her by the court clerk, unless revoked or suspended by a court of competent jurisdiction.

(c) If the defendant does not appear to answer the charge within twenty (20) days, or such later date as may be fixed by the court, then his or her motor vehicle operator's or chauffeur's license shall be determined to have been forfeited. The license shall be revoked by the court, or, in the event of a revocation or suspension of the motor vehicle operator's or chauffeur's license as a result of the trial of the case by the court, it shall be transmitted by the clerk of the court with a statement of the reason for the forfeiture, revocation, or suspension to the Director of the Office of Driver Services within one (1) day after the order or decision of the court revoking or suspending it.

**History.** Acts 1973, No. 246, § 2; A.S.A. 1947, § 75-1008.2.

### **27-50-608. Application for duplicate license after deposit unlawful.**

(a) It shall be unlawful to make application for a duplicate license to operate a motor vehicle during the period when the original license is posted for an appearance in a court.



(b) Any person convicted thereof may be punishable by imprisonment of not less than seven (7) days nor more than six (6) months and by a fine of not more than five hundred dollars (\$500), or both such fine and imprisonment.

**History.** Acts 1973, No. 246, § 3; A.S.A. 1947, § 75-1008.3.

### **27-50-609. Optional posting of bond or bond card — Exception.**

(a) When any law enforcement officer in this state arrests or issues a citation for any traffic law violation or motor vehicle accident and the officer is authorized by law to take possession of and retain the operator's or chauffeur's license of the person so charged or cited, the person arrested or to whom the citation is issued shall have the option to either surrender his or her operator's or chauffeur's license or post a bond or a bond card to assure his or her appearance in court on the offense charged.

(b) The option to post a bond card shall not be available to a person charged with driving while intoxicated.

(c) As used in this section, the term "law enforcement officer" shall mean any member of the Arkansas State Police, a sheriff or a deputy sheriff, a member of a municipal police force, or a constable.

**History.** Acts 1981, No. 499, § 1; 1983, No. 411, § 1; A.S.A. 1947, § 75-1008.4.

### **CASE NOTES**

**Cited:** *Hudgens v. State*, 324 Ark. 169, 919 S.W.2d 939 (1996).

### **27-50-610. Issuance of bond card.**

A professional bail bond company as defined in § 17-19-101 et seq., a qualified surety pursuant to §§ 27-50-611 and 27-50-612, and an automobile club or association as defined in §§ 23-77-101 — 23-77-109, may issue a bond card to a person licensed as an operator or chauffeur which shall constitute evidence of the undertaking of bond by the company to assure the appearance in court for the offense charged of a person arrested or issued a traffic citation for a motor vehicle accident or traffic law violation up to and including the amount in dollars stated upon the face of the bond card.

**History.** Acts 1983, No. 411, § 2; A.S.A. 1947, § 75-1008.5; Acts 1989, No. 417, § 4.

**Publisher's Notes.** The reference to

the code section in Title 17 has been updated to reflect the 1995 realphabetization of the chapters in that title.

**27-50-611. Right of qualified surety company to become surety with respect to guaranteed arrest bond certificates.**

(a) Any domestic or foreign surety company which has qualified to transact surety business in this state may, in any year, become surety in an amount not to exceed two hundred dollars (\$200) with respect to any guaranteed arrest bond certificates issued in that year by an automobile club or association by filing with the Insurance Commissioner of this state an undertaking thus to become surety.

(b) Such undertaking shall be in form to be prescribed by the commissioner and shall state the following:

(1) The name and address of the automobile club or automobile association with respect to the guaranteed arrest bond certificates of which the surety company undertakes to be surety;

(2) The unqualified obligation of the surety company to pay the fine or forfeiture in an amount not to exceed two hundred dollars (\$200) of any person who, after posting a guaranteed arrest bond certificate with respect to which the surety company has undertaken to be surety, fails to make the appearance to guarantee which the guaranteed arrest bond certificate was posted.

(c) The term "guaranteed arrest bond certificate", as used in this section, means any printed card or other certificate issued by an automobile club or association to any of its members, which is signed by the member and contains a printed statement that the automobile club or association and a surety company guarantee the appearance of the person whose signature appears on the card or certificate and that they will, in the event of failure of the person to appear in court at the time of trial, pay any fine or forfeiture imposed on the person in an amount not to exceed two hundred dollars (\$200).

**History.** Acts 1955, No. 54, § 1; A.S.A. 1947, § 75-1035.

**27-50-612. Guaranteed arrest bond certificates as cash bail.**

(a) Any guaranteed arrest bond certificate with respect to which a surety company has become surety, as provided in § 27-50-611, when posted by the person whose signature appears thereon, shall be accepted in lieu of cash bail in an amount not to exceed two hundred dollars (\$200) as a bail bond to guarantee the appearance of the person in any court, including district courts, in this state at such time as may be required by the court, when the person is arrested for violation of any motor vehicle law of this state or ordinance of any municipality in this state except for the offense of driving while intoxicated or for any felony when the violation is committed prior to the date of expiration shown on such guaranteed arrest bond certificates.

(b) Any guaranteed arrest bond certificate so posted as a bail bond in any court in this state shall be subject to the forfeiture and enforcement provisions with respect to bail bonds posted in criminal cases, and that any guaranteed arrest bond certificate posted as a bail bond in any

municipal court in this state shall be subject to the forfeiture and enforcement provisions of the charter or ordinance of the particular municipality pertaining to bail bonds posted.

**History.** Acts 1955, No. 54, § 2; A.S.A. 1947, § 75-1036.

SUBCHAPTER 7 — TRIAL AND JUDGMENT

SECTION.

27-50-701. Postponement of judgment.

27-50-702. Request for entry or postponement of judgment.

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**Publisher's Notes.** Acts 1985, No. 967, §§ 1, 2, are also codified as § 5-4-321.

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**27-50-701. Postponement of judgment.**

In traffic misdemeanor cases, other than cases involving driving under the influence of alcohol or drugs, the judge shall have authority to postpone judgment for not more than one (1) year, during which period the defendant shall be in a probationary status, supervised or unsupervised, and shall remain in probationary status until judgment is entered.

**History.** Acts 1985, No. 967, § 1; A.S.A. 1947, § 75-1059.

**27-50-702. Request for entry or postponement of judgment.**

(a) At the request of the defendant, parent of a minor defendant, or counsel for the defense, judgment shall be entered as quickly as feasible and not more than ten (10) days following such request.

(b) At the request of the defendant, parent of a minor defendant, or counsel for the defense, probation may be continued and judgment postponed for more than one (1) year.

**History.** Acts 1985, No. 967, § 2; A.S.A. 1947, § 75-1060; Acts 1987, No. 457, § 1.

SUBCHAPTER 8 — CONVICTIONS

SECTION.

27-50-801. [Repealed.]

27-50-802. Certain speeding convictions not included in report — Exception for chauffeurs.

SECTION.

27-50-803. Notification when minor convicted.

27-50-804. Records inadmissible in civil actions.



## SECTION.

27-50-805. Credibility as witness not affected.

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**Effective Dates.** Acts 1937, No. 300, § 165: Mar. 23, 1937. Emergency clause provided: "It is hereby ascertained and determined by the General Assembly that the proper regulation of traffic on the highways is a necessary function of the State Government, and that the loss of life and property under the present laws creates an emergency. Therefore, this act being necessary for the immediate preservation of the public peace, health and safety, shall go into effect immediately upon its passage and approval."

Acts 1967, No. 92, § 3: Feb. 14, 1967. Emergency clause provided: "It is hereby found and determined by the General Assembly that very often persons under the age of eighteen (18) years are convicted of moving traffic violations in this State, yet the parents, guardians and other persons responsible for such children have no knowledge of such conviction; and, in order that proper discipline and control may be exercised over the conduct of such children in the operation of motor vehicles, and in order to promote the public safety, the immediate passage of this Act is necessary. Therefore, an emergency is hereby declared to exist, and this Act being immediately necessary for the preservation of the public peace, health and safety, shall be in effect from and after the date of its passage and approval."

Acts 1975, No. 276, § 2: Feb. 28, 1975. Emergency clause provided: "It is hereby found and determined by the General Assembly that the reporting of convictions for the offense of speeding when the speed was in excess of fifty-five miles per hour (55 mph) but less than the speed limit established prior to Public Law 93-239 is

working an undue hardship upon the citizens of this State; that said conviction records are used by insurance companies to adjust premiums for motor vehicle coverage; and that under the circumstances as mentioned herein a speeding conviction should not adversely affect insurance premiums since such conviction is not related to safety, but is the result of legislation designed primarily for the purpose of conserving energy. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1983, No. 834, § 2: Mar. 25, 1983. Emergency clause provided: "It is hereby found and determined by the General Assembly that although the reporting of convictions for the offense of speeding in excess of fifty-five (55) miles per hour but less than the speed limit established prior to Public Law 93-239 works an undue hardship upon the people of this State because of the upward adjustment of insurance premiums for motor vehicle coverage when Public Law 93-239 was not passed for the purpose of promoting safety but energy conservation, it does provide some measure of safety to the public when chauffeurs are required by their employers to comply with the fifty-five (55) miles per hour speed limit thereby protecting not only the chauffeurs and their employers' property but also the public at large. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

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## 27-50-801. [Repealed.]

**Publisher's Notes.** This section, concerning the requirement that convictions

and forfeitures be reported, was repealed by Acts 2009, No. 456, § 19. The section

was derived from Acts 1937, No. 300, § 160; Pope's Dig., § 6820; A.S.A. 1947, § 75-1013; Acts 2005, No. 1535, § 3.

### **27-50-802. Certain speeding convictions not included in report — Exception for chauffeurs.**

(a) All courts in this state required by law to furnish records of convictions of all motor vehicle violations to the Office of Driver Services of the Department of Finance and Administration shall continue to furnish the records, but in compiling reports of convictions of traffic violations, the Office of Driver Services shall not include in the traffic violation report of any individual any conviction for the offense of speeding if the conviction is based on speeding upon a public highway in excess of fifty-five miles per hour (55 m.p.h.) speed limit as established pursuant to Public Law 93-239 of January 2, 1974, but less than seventy-five miles per hour (75 m.p.h.).

(b) The Office of Driver Services shall include in the traffic violation report of any person holding a chauffeur's license any conviction for the offense of speeding in excess of the fifty-five miles per hour (55 m.p.h.) speed limit as established pursuant to Public Law 93-239 of January 2, 1974, to the employer of the person and shall furnish the complete driver history record of the person pursuant to a written authorization as provided in § 27-50-908 to the employer of the person holding a chauffeur's license.

**History.** Acts 1975, No. 276, § 1; 1983, No. 834, § 1; A.S.A. 1947, § 75-1013.1; Acts 1987, No. 721, § 1.

**U.S. Code.** The relevant portions of Public Law 93-239, referred to in this section, have been repealed.

### **27-50-803. Notification when minor convicted.**

Whenever any court in this state shall convict any person under the age of eighteen (18) years of any moving traffic violation under the laws of this state, or under any municipal ordinance, whether the fine and sentence imposed shall be collected or whether it may be suspended, the convicting court shall notify in writing the parents, guardian, or other person who signed the application of the person for an instructor's permit or operator's license as required by the provisions of § 27-16-702. If the convicted person does not have an instructor's permit or operator's license, the court shall notify the father or mother of the person, if living, or the guardian or other person having custody of the person of the conviction.

**History.** Acts 1967, No. 92, § 1; A.S.A. 1947, § 75-1044.

**27-50-804. Records inadmissible in civil actions.**

No record of the forfeiture of a bond or of the conviction of any person for any violation of this subtitle shall be admissible as evidence in any court in any civil action.

**History.** Acts 1937, No. 300, § 158; Pope's Dig., § 6818; Acts 1961, No. 216, § 1; A.S.A. 1947, § 75-1011.

**CASE NOTES****ANALYSIS**

Arrest Record.  
Certified Copies.  
Error in Testimony.  
Guilty Pleas.  
Harmless Error.  
Testimony of Court Officials.  
Witness Statements.

**Arrest Record.**

A question pertaining to the arrest of a defendant is not incompetent under this section. *Beene v. Youngblood*, 247 Ark. 667, 447 S.W.2d 62 (1969).

**Certified Copies.**

A trial court in an action stemming from a traffic mishap was correct in refusing to allow the certified copy of the record of the municipal court in which an individual paid a fine for "failure to allow the right-of-way" to be introduced in evidence. *Harbor v. Campbell*, 235 Ark. 492, 360 S.W.2d 758 (1962).

**Error in Testimony.**

Where a party to a civil action was asked whether or not he had pleaded guilty to driving on the wrong side of the road and he answered, "Yes, I forfeited bond," the error was that of the party so testifying and therefore not available to him as grounds for reversal. *Midwest Bus Lines v. Williams*, 243 Ark. 854, 422 S.W.2d 869 (1968).

**Guilty Pleas.**

While the municipal court record of a conviction for a traffic violation cannot be introduced because of this section, a plea of guilty as reflected in the records is competent as a declaration against interest. In addition, the arresting officer may testify as to what transpired in his presence, and if he is present in the court room

at the time the case is heard, the officer may testify in a subsequent civil action as to any plea the defendant entered in his presence in the municipal court criminal action. *MFA Mut. Ins. Co. v. Dixon*, 243 F. Supp. 806 (W.D. Ark. 1965).

A plea of guilty to violation of a traffic law was an admission against interest, and a question in a civil action as to whether defendant so pleaded was proper. *Midwest Bus Lines v. Williams*, 243 Ark. 854, 422 S.W.2d 869 (1968).

Only proper evidence relating to a traffic violation conviction is a party's plea of guilty in open court. *Dedman v. Porch*, 293 Ark. 571, 739 S.W.2d 685 (1987).

Where probation contract was insufficient to support a finding that defendant had entered a guilty plea in open court, it was properly excluded by the trial court in a civil action. *Ice v. Bramlett*, 311 Ark. 157, 842 S.W.2d 29 (1992).

Trial court did not err by granting a motion in limine to prohibit introduction of evidence, in wrongful death action brought after one passenger died in automobile accident, that both drivers pleaded nolo contendere to the charge of negligent homicide under this section and § 27-50-307 resulting from the collision. *Patterson v. Odell*, 322 Ark. 394, 909 S.W.2d 648 (1995).

Where a driver sued another driver for negligence regarding a car accident, it was not an abuse of discretion to exclude evidence related to the other driver's traffic citation and resulting negotiated plea, because the other driver did not appear in court, and accordingly, did not enter a plea in open court. *Nixon v. Chapman*, 103 Ark. App. 222, 288 S.W.3d 266 (2008).

**Harmless Error.**

In a personal injury action, question about whether the defendant received a



ticket for traffic violation was improper; however, where the trial court sustained objection to this question and promptly admonished the jury to disregard the question and answer and defendant neither moved for a mistrial nor made other evidence of disagreement, any prejudice arising from the question was removed. *Breitenberg v. Parker*, 237 Ark. 261, 372 S.W.2d 828 (1963).

**Testimony of Court Officials.**

Testimony of municipal court deputy clerk from the docket sheet of the various details of the case just as effectively introduced a record of conviction in the municipal court for violation of this section as if the docket sheet had been made an exhibit

and thus violated this section. *Garver v. Utyesonich*, 235 Ark. 33, 356 S.W.2d 744 (1962).

**Witness Statements.**

A witness' statement that the police officer investigating the accident said he would have to take the driver to town was not evidence of a conviction, and thus does not violate this section. *Fletcher v. Johnson*, 231 Ark. 132, 328 S.W.2d 373 (1959).

**Cited:** *Girard v. Kuklinski*, 235 Ark. 337, 360 S.W.2d 115 (1962); *Bearden v. J.R. Grobmyer Lumber Co.*, 331 Ark. 378, 961 S.W.2d 760 (1998); *Dovers v. Stephenson Oil Co.*, 354 Ark. 695, 128 S.W.3d 805 (2003).

**27-50-805. Credibility as witness not affected.**

The forfeiture of a bond or the conviction of a person upon a charge of violating any provision of this act or other traffic regulation less than a felony shall not affect or impair the credibility of the person as a witness in any civil or criminal proceeding.

**History.** Acts 1937, No. 300, § 159; Pope's Dig., § 6819; Acts 1961, No. 216, § 2; A.S.A. 1947, § 75-1012.

**Meaning of "this act".** Acts 1937, No. 300, codified as §§ 6-19-111, 27-35-101 — 27-35-111, 27-36-101, 27-36-102, 27-36-201 — 27-36-204, 27-36-206 — 27-36-212, 27-36-213 [repealed], 27-36-214 — 27-36-220, 27-37-101, 27-37-102, 27-37-202 — 27-37-206, 27-37-301 — 27-37-303, 27-37-305, 27-37-401, 27-37-501, 27-37-502, 27-37-601, 27-49-101 — 27-49-112, 27-49-201 — 27-49-219, 27-50-101, 27-50-102, 27-50-304, 27-50-307, 27-50-308, 27-50-601 —

27-50-603, 27-50-604 [repealed], 27-50-605, 27-50-801 [repealed], 27-50-804, 27-50-805, 27-51-201, 27-51-202, 27-51-206, 27-51-208 — 27-51-211, 27-51-301 — 27-51-308, 27-51-401 — 27-51-405, 27-51-501 — 27-51-503, 27-51-601 — 27-51-603, 27-51-702, 27-51-703, 27-51-705, 27-51-801 — 27-51-803, 27-51-901 — 27-51-903, 27-51-1201 — 27-51-1205, 27-51-1301 — 27-51-1304, 27-51-1306 — 27-51-1308, 27-51-1401 — 27-51-1405, 27-52-101, 27-52-103 — 27-52-109, 27-53-101 — 27-53-105, 27-53-201 — 27-53-208.

**RESEARCH REFERENCES**

**Ark. L. Rev.** Cross Examination and Impeachment, 15 Ark. L. Rev. 39.

Character, Corruption and Contradiction in Arkansas, 15 Ark. L. Rev. 50.

Conviction Upon Plea of Nolo Contendere as Impeaching Evidence, 21 Ark. L. Rev. 124.

Witnesses, 27 Ark. L. Rev. 229.

**CASE NOTES**

**ANALYSIS**

Admission.

Inadmissible Testimony.

Testing Credibility.

**Admission.**

Defendant's counsel's admission that his client had been drinking before an accident was not an invitation for the use of incompetent and prejudicial evidence

that a police officer had placed a charge against defendant for driving while under the influence of intoxicants. *Girard v. Kuklinski*, 235 Ark. 337, 360 S.W.2d 115 (1962).

### **Inadmissible Testimony.**

Testimony given by two police officers who investigated an accident, which was the basis of the personal injury action, that, in their opinion, the defendant was drunk was inadmissible, and the testimony of one of the police officers, given over objection, who had placed a charge against defendant for driving while under the influence of intoxicants was likewise incompetent, since there was no proof given that a conviction resulted. *Girard v. Kuklinski*, 235 Ark. 337, 360 S.W.2d 115 (1962).

### **Testing Credibility.**

In action for personal injuries and property damage resulting from collision between plaintiffs' automobile and defendant's disabled truck, it was error for court to permit driver of truck to be questioned about conviction for speeding month after collision and in telling jury that conviction might be considered as bearing on driver's credibility. *Dixie Culvert Mfg. Co. v. Richardson*, 218 Ark. 427, 236 S.W.2d 713 (1951).

Questions on cross-examination about previous convictions of drunkenness are permissible to test credibility. *Rickett v. Hayes*, 251 Ark. 395, 473 S.W.2d 446 (1971).

## **SUBCHAPTER 9 — CENTRAL DRIVER'S RECORDS FILE**

### **SECTION.**

- 27-50-901. Establishment.
- 27-50-902. Report from courts required.
- 27-50-903. Responsibility to properly file conviction reports.
- 27-50-904. Conviction for offense arising out of railroad accident.
- 27-50-905. Procedure for driver's right to contest entries.

### **SECTION.**

- 27-50-906. Furnishing of abstracts.
- 27-50-907. Availability of recorded information.
- 27-50-908. Forms of authorization.
- 27-50-909. Fees for furnishing record.
- 27-50-910. Disposition of funds.
- 27-50-911. Rules and regulations.

**Publisher's Notes.** Acts 1977, No. 465, § 11, provided that the act did not affect rights or duties that matured, liabilities or penalties that were incurred, or proceedings that were begun before July 6, 1977.

**Effective Dates.** Acts 1979, No. 1067, § 3: July 1, 1979. Emergency clause provided: "It is hereby found and determined by the Seventy-Second General Assembly that there is urgent need for additional funds for the construction, maintenance, and repair of State Highways and that the revenues normally considered highway revenues and available for such purposes are inadequate, that this Act is necessary to make additional revenue available for this purpose and should be given effect on July 1, 1979. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall take effect on July 1, 1979."

Acts 1997, No. 892, § 8: Mar. 27, 1997. Emergency clause provided: "It is hereby found and determined by the Eighty-First General Assembly of the State of Arkansas that the Arkansas Uniform Commercial Driver License Act is out of compliance with federal laws concerning the commercial driver licenses thereby threatening a certain amount of federal highway funds; that federal highway funding is critical to most of the highway construction projects and threatens the fiscal health and safety of Arkansas' highway programs; and that these clarifications in Arkansas' law should take effect immediately to prevent any possible loss of the critical federal highway funds. Therefore, in order to remove the conflicts in those laws, an emergency is hereby declared to exist, and this act being necessary for the immediate preservation of the public peace, health, and safety shall become effective on the date of its ap-

proval by the Governor. If the bill is neither approved or vetoed by the Governor, it shall become effective on the expiration of the period of time during which the

Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

### RESEARCH REFERENCES

**U. Ark. Little Rock L.J.** Survey of Arkansas Law, Public Law, 1 U. Ark. Little Rock L.J. 230.

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#### **27-50-901. Establishment.**

The Office of Driver Services of the Department of Finance and Administration shall establish and maintain a central driver's records file on every driver who receives a conviction for a moving traffic violation while operating any motor vehicle subject to registration for highway use, whether such conviction occurred within this state or in another state.

**History.** Acts 1977, No. 465, § 1; A.S.A. 1947, § 75-1057.

#### **27-50-902. Report from courts required.**

(a) All courts in this state which have jurisdiction over such offenses shall report all final convictions to the Office of Driver Services utilizing the uniform traffic ticket as provided for under the provisions of §§ 27-50-501 and 27-50-504.

(b) In compiling and maintaining a central driver record file, the office shall ascertain to the best of its ability the authenticity of all final convictions reported to the office by requiring that all final dispositions by the courts dealing with these matters be signed by an official of the court.

**History.** Acts 1977, No. 465, §§ 1, 2; A.S.A. 1947, §§ 75-1057, 75-1057.1.

#### **27-50-903. Responsibility to properly file conviction reports.**

(a) It shall be the responsibility of the Office of Driver Services to properly file all traffic violation convictions received from the courts of this state or any other state and assign the conviction report to the named driver in the report.

(b) In the event a conviction report is improperly filed or reported, it shall be the responsibility of the office to correct the record and to notify the driver and any other party who has received the report of the incorrect filing and the fact that the record in question has been corrected.



**History.** Acts 1977, No. 465, § 3; A.S.A. 1947, § 75-1057.2.

**27-50-904. Conviction for offense arising out of railroad accident.**

The Office of Driver Services shall not include in the traffic violation report of a railroad engineer, conductor, fireman, or brakeman any conviction for an offense arising out of a railroad accident occurring while the engineer, conductor, fireman, or brakeman was performing duties as an engineer, conductor, fireman, or brakeman of a railroad.

**History.** Acts 1979, No. 393, § 1; A.S.A. 1947, § 75-1057.9.

**27-50-905. Procedure for driver's right to contest entries.**

(a)(1) Every driver on whom a record of traffic violations has been compiled shall have the right to contest any entry made in his driver's record.

(2) If the driver disputes any entry on his or her record he or she must, in order to preserve his or her rights under this section, notify in writing the Office of Driver Services within thirty (30) days of receipt of the report provided for in § 27-50-902.

(b)(1) The notification, as required, shall set forth in detail the ground upon which the driver bases his or her objections to the entry.

(2) Within thirty (30) days after receipt of the notice, the office shall either remove the entry from the driver's record or notify the driver that the office finds the entry to be correct and that the entry shall remain a part of the driver's record.

(3) If the office finds the entry to be correct, the notification of this fact to the driver shall state the grounds for the finding.

(c)(1) In the event the office finds the entry to be correct, the aggrieved driver may file suit in the circuit court of the county in which the driver resides within twenty (20) days after receiving notice from the office that the entry was found to be correct to seek an order from the court requiring the office to change or delete the entry from the driver's record.

(2) The court's review of such an action shall be limited to a determination of whether the office had just cause to record the traffic violation in question on the record of the aggrieved driver and whether the office acted in compliance with §§ 27-50-902 and 27-50-903.

(3) The burden of proof in the action shall be upon the driver instituting the action.

(d)(1) If the court finds the entry to be incorrect, it shall order the office to amend the entry or delete the entry entirely.

(2)(A) A driver who has brought suit to require a change in his or her record and who has obtained an order of the court requiring the change may file a claim for his or her attorney's fees and any other damages he or she may have suffered with the Arkansas State Claims Commission.

(B) The claim shall be filed in the manner required by law.

**History.** Acts 1977, No. 465, § 4; A.S.A. Claims Commission, filing of claim, § 19-1947, § 75-1057.3. 10-201 et seq.

**Cross References.** Arkansas State

## **27-50-906. Furnishing of abstracts.**

(a) The Office of Driver Services may furnish an abstract or driver confirmation record of any driver's record to:

(1) The driver on whom the record has been compiled;

(2) Any person who has been authorized in writing by the driver to obtain the driver's record;

(3) Any court having jurisdiction over traffic offenses;

(4) Any law enforcement officer, who shall use the report only in the line of duty in enforcing the traffic laws of this state;

(5) Employers of drivers, provided that the driver has given his or her written consent for the employer to obtain the driver's record;

(6) Any insurer licensed to do business in Arkansas or its agents, employees, or contractors in connection with the driving record or driver confirmation record of an insured or applicant and all licensed drivers in the household of the insured or applicant;

(7)(A) Any governmental department or agency upon a showing of reasonable cause as to why the driver's record should be issued to the governmental department or agency in order for the governmental department or agency to effectively carry out its statutory duties.

(B) No driver's record shall be reported to any individual except duly authorized officials of the office unless a copy of the report and the name of the individual or organization which received the report are sent to the driver named in the report; and

(8)(A) A driver's license status report shall be available to rental car companies who otherwise meet the requirements of this section for receiving an abstract of a driver's record upon the payment of one dollar (\$1.00) for each license number checked. This fee shall be deposited to the State Treasury into the State Central Services Fund as a direct revenue to be used by the Revenue Division of the Department of Finance and Administration.

(B) The Information Network of Arkansas may charge an additional fee for the service of transmitting this information electronically.

(b) For purposes of this section, "driver confirmation record" means information in the office concerning the name, date of birth, and current address of the licensed driver.

(c)(1)(A) The fee for an insured's or applicant's driver confirmation record shall be ten cents (10¢) per record.

(B) This fee shall be deposited into the fund as a direct revenue to be used by the division.

(2) The network may charge an additional fee for the service of transmitting this information electronically.

**History.** Acts 1977, No. 465, § 1; A.S.A. 1947, § 75-1057; Acts 1999, No. 1359, § 1; 2001, No. 1810, § 1.

**Cross References.** Information Network of Arkansas § 25-27-101 et seq.

### **27-50-907. Availability of recorded information.**

(a) All information concerning a driver's record shall be made available to the driver or his or her legal representative.

(b)(1) Information such as medical reports or other personal information shall not be a part of any written report the Office of Driver Services may provide, nor shall the office allow any person to copy or reproduce such records.

(2) Information in the central drivers' records file concerning the name, age, and current address of all drivers over the age of sixteen (16) years and under the age of twenty-six (26) years shall be made available to the Arkansas military recruiting coordinators for any of the armed forces of the United States for distribution to their branch offices. The information shall be available upon request of the military recruiting coordinators and may be requested and updated up to two (2) times during any calendar year.

(c) No digital driver's license photograph shall be disclosed to any individual or organization, except upon the written request for disclosure to a named individual or to a party by the person whose photograph is on the driver's license. A fee of five dollars (\$5.00) shall be charged for each digital driver's license photograph provided by the office.

**History.** Acts 1977, No. 465, § 5; A.S.A. 1947, § 75-1057.4; Acts 1997, No. 892, § 4; 1999, No. 111, § 1.

### **27-50-908. Forms of authorization.**

(a)(1) The authorization to obtain a driver's record by anyone other than the driver, as provided in this subchapter, may be in the form of a signed release by the driver, power of attorney, and in the case of a minor, the parent or guardian or a legally appointed representative of the driver.

(2) The limited information concerning a driver's name, age and current address shall be subject to release to the military recruiting coordinators unless such release is denied by the driver or his or her legally appointed representative.

(b) A release signed by a driver or his or her legally appointed representative giving authority to an individual or organization to obtain the driver's driving record shall remain in force for a period of five (5) years from the date signed by the driver or until the date the driver or his or her legally appointed representative has withdrawn the release in writing on a form approved by and supplied by the office, whichever date occurs first.



**History.** Acts 1977, No. 465, § 6; A.S.A. § 2; 1999, No. 111, § 2; 1999, No. 1359, 1947, § 75-1057.5; Acts 1995, No. 959, § 2.

### **27-50-909. Fees for furnishing record.**

(a)(1) The Office of Driver Services may report a driver's record without charge to all courts, law enforcement agencies, governmental agencies, and public transit systems as provided in this subchapter. For purposes of this section "public transit systems" means entities which provide regular and continuing general or special transportation to the public and which receive federal assistance under 49 U.S.C. § 5307 or 49 U.S.C. § 5311.

(2) A fee in the amount prescribed in § 27-23-117(c) may be charged for any record search made and reported to the driver on whom the record is compiled or any other individual or organization requesting the record.

(3) The office shall charge a fee to report information concerning a driver's name, age, and current address of all drivers over the age of sixteen (16) years and under the age of twenty-six (26) years to the military recruiting services. The fee shall be determined by the office in an amount designed to recover the cost of producing the information for the recruiting services.

(b) Where a release has been granted by a driver or his or her legally appointed representative and the release has not been withdrawn as provided for in § 27-50-908, then all subsequent reports made on the driver shall be subject to the fee in effect at the time the subsequent report is made.

**History.** Acts 1977, No. 465, § 7; A.S.A. § 1; 1999, No. 111, § 3; 2001, No. 1553, 1947, § 75-1057.6; Acts 1997, No. 225, § 58.

### **27-50-910. Disposition of funds.**

Moneys collected under the provisions of this subchapter shall be special revenues and deposited in the State Treasury to the credit of the State Highway and Transportation Department Fund for distribution as provided in the Highway Distribution Law of this state.

**History.** Acts 1977, No. 465, § 8; 1979, No. 1067, § 1; A.S.A. 1947, § 75-1057.7. probably means the "Highway Revenue Distribution Law," § 27-70-201 et seq.

**Publisher's Notes.** The "Highway Distribution Law" referred to in this section **Cross References.** Highway Revenue Distribution Law, § 27-70-201 et seq.

### **27-50-911. Rules and regulations.**

The Director of the Department of Finance and Administration may promulgate rules and regulations necessary to carry out the provisions of this subchapter.

**History.** Acts 1977, No. 465, § 9; A.S.A. 1947, § 75-1057.8.

## SUBCHAPTER 10 — REPORTS OF ACCIDENTS

### SECTION.

27-50-1001. Copies to be obtained.  
 27-50-1002. Reports to be complete.  
 27-50-1003. Method to determine recording of accident information.

### SECTION.

27-50-1004. Reports by private citizens.  
 27-50-1005. Involvement of unattended vehicle in accident.  
 27-50-1006. Right of aggrieved driver.  
 27-50-1007. Scheduling of hearings.

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**Cross References.** Accident reports,  
 § 27-53-201 et seq.

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### 27-50-1001. Copies to be obtained.

(a) The Office of Driver Services of the Department of Finance and Administration shall obtain a copy of every accident report filed with the Department of Arkansas State Police as required under Acts 1937, No. 300, as amended.

(b) The office shall reimburse the Department of Arkansas State Police for the cost, if any, of preparing copies of the accident reports.

**History.** Acts 1979, No. 1037, § 1; A.S.A. 1947, § 75-1058.

**Publisher's Notes.** Acts 1937, No. 300, codified as §§ 6-19-111, 27-35-101 — 27-35-111, 27-36-101, 27-36-102, 27-36-201 — 27-36-204, 27-36-206 — 27-36-212, 27-36-213 [repealed], 27-36-214 — 27-36-220, 27-37-101, 27-37-102, 27-37-202 — 27-37-206, 27-37-301 — 27-37-303, 27-37-305, 27-37-401, 27-37-501, 27-37-502, 27-37-601, 27-49-101 — 27-49-112, 27-49-201 — 27-49-219, 27-50-101, 27-50-102, 27-50-304, 27-50-307, 27-50-308, 27-50-601 —

27-50-603, 27-50-604 [repealed], 27-50-605, 27-50-801 [repealed], 27-50-804, 27-50-805, 27-51-201, 27-51-202, 27-51-206, 27-51-208 — 27-51-211, 27-51-301 — 27-51-308, 27-51-401 — 27-51-405, 27-51-501 — 27-51-503, 27-51-601 — 27-51-603, 27-51-702, 27-51-703, 27-51-705, 27-51-801 — 27-51-803, 27-51-901 — 27-51-903, 27-51-1201 — 27-51-1205, 27-51-1301 — 27-51-1304, 27-51-1306 — 27-51-1308, 27-51-1401 — 27-51-1405, 27-52-101, 27-52-103 — 27-52-109, 27-53-101 — 27-53-105, 27-53-201 — 27-53-208.

### 27-50-1002. Reports to be complete.

(a) No analysis shall be made by the Office of Driver Services of the Department of Finance and Administration from accident reports which do not contain sufficient information to make a fair analysis of the report.

(b) Diagrams required on the report shall be complete with adequate descriptive narrative to determine what occurred in the accident.

(c) All other information required in the report shall be completed by the investigating officer and all witnesses, if any, properly identified.

**History.** Acts 1979, No. 1037, § 7; A.S.A. 1947, § 75-1058.6.

**27-50-1003. Method to determine recording of accident information.**

(a) The Office of Driver Services shall determine from the accident report if the information is to be placed in the driver's record by careful analysis of the report by a person duly appointed by the administrator of the office.

(b)(1) No record of an accident shall be recorded for any person who is found not guilty in a court of competent jurisdiction after having received a citation for a traffic law violation that resulted from the investigation of the accident.

(2) Where a conviction does not occur, the analysis shall conclude that certain persons were primarily at fault in the accident.

(c) In the instance where a clear determination cannot be made from the investigating police officer's report of the accident, then no entry will be made in the record of any person involved in the accident.

**History.** Acts 1979, No. 1037, § 2;  
A.S.A. 1947, § 75-1058.1.

**27-50-1004. Reports by private citizens.**

When a report of an accident is made by a driver of a vehicle involved in any accident, as required by §§ 27-53-202 and 27-53-203, the Office of Driver Services of the Department of Finance and Administration shall determine if sufficient evidence exists in the report to make an analysis and may require that supplemental information be filed by the person making the report or by any other person involved in the accident, before a final determination is made.

**History.** Acts 1979, No. 1037, § 3;  
A.S.A. 1947, § 75-1058.2.

**27-50-1005. Involvement of unattended vehicle in accident.**

(a) No entry shall be made into the record of a person whose unattended vehicle has been involved in an accident unless the person's vehicle was illegally parked or the accident was the direct result of negligence on the part of the person who was responsible for the unattended vehicle at the time the accident occurred.

(b) The determination that a vehicle was illegally parked shall be made as a result of the conviction of the person for such a violation.

**History.** Acts 1979, No. 1037, § 6;  
A.S.A. 1947, § 75-1058.5.

**27-50-1006. Right of aggrieved driver.**

(a) Any driver aggrieved by an entry into his or her record may request that the Office of Driver Services of the Department of Finance and Administration conduct a hearing for the purpose of contesting the



information contained in the accident report or the method by which the decision was made to enter the information into the person's record.

(b)(1) The conviction of a person for a traffic violation which caused the accident shall be prima facie evidence of who was primarily at fault in the accident and no hearing shall be held where such evidence exists.

(2) When appeals are taken from the decision of the trial court for a traffic violation, the office shall immediately expunge the record of the entry made as a result of the accident report until such time as the appeal becomes final.

**History.** Acts 1979, No. 1037, § 4;  
A.S.A. 1947, § 75-1058.3.

### 27-50-1007. Scheduling of hearings.

Hearings shall be conducted in the county of residence of the driver requesting the hearing within forty-five (45) days from the date the hearing request is received by the Office of Driver Services of the Department of Finance and Administration unless another time and place is otherwise agreed to by the driver and the office.

**History.** Acts 1979, No. 1037, § 5;  
A.S.A. 1947, § 75-1058.4.

## SUBCHAPTER 11 — ABANDONED VEHICLES

### SECTION.

27-50-1101. Nonconsensual towing of a vehicle, implement, or piece of machinery.

### SECTION.

27-50-1102. [Repealed.]

**Effective Dates.** Acts 1969, No. 195, § 3: Mar. 7, 1969. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that an immediate need exists for an expeditious and economical means of disposing of the large number of vehicles abandoned within this State. Therefore, an emergency is declared to exist and this Act being necessary for the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1981, No. 433, § 3: Mar. 12, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present law pertaining to the disposition of abandoned motor vehicles is unclear as to the procedures involved when multiple vehicles are disposed of at a single sale, and that this Act

is immediately necessary to establish such procedures. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 2009, No. 681, § 2: Mar. 27, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that there are issues related to towing and storage that have arisen that call into question the adequacy of state law; that there have been numerous incidents where a vehicle, implement, or piece of machinery was towed from an area that lacked proper signage to provide notice to the operator that parking was prohibited; that property owners have had vehicles, implements, or pieces of machinery removed to

distant locations from the area in which found abandoned or improperly parked; and that, as a result, the towing and storage charges exceeded the usual and customary amount in the community; and this act is immediately necessary so that a city of the first class, city of the second class, or incorporated town can enact ordinances to regulate the property owners and to protect the health and safety of their citizens related to towing and storage. Therefore, an emergency is declared

to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

### RESEARCH REFERENCES

**Ark. L. Rev.** Abandoned Property, 7  
Ark. L. Rev. 339.

### CASE NOTES

#### **Common Law.**

Sections 27-50-1101, 27-50-1102 [repealed], and 27-50-1201 — 27-50-1210 [repealed and reenacted] have not implicitly amended the common law rule now em-

bodied in § 16-89-103, since the laws are not so inconsistent that they cannot stand together. *Routh Wrecker Serv., Inc. v. Wins*, 312 Ark. 123, 847 S.W.2d 707 (1993).

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### **27-50-1101. Nonconsensual towing of a vehicle, implement, or piece of machinery.**

(a)(1)(A) When a vehicle of a type subject to registration under the laws of this state, an implement, or a piece of machinery is found abandoned on private or public property within this state or is parked on private or public property within this state without the authorization of the property owners or other persons controlling the property, the property owner or his or her agent may have the vehicle, implement, or piece of machinery removed from the property by a towing and storage firm licensed by and subject to the rules of the Arkansas Towing and Recovery Board.

(B)(i) A city of the first class, city of the second class, or incorporated town by ordinance may regulate the manner that a property owner or other person controlling the property removes a vehicle, implement, or piece of machinery:

(a) By limiting:

(1) The distance from the location of removal to the destination of storage;

(2) The amount of towing and storage charges, including the towing charge, the storage charge, the administrative fee, and any other fee that may be charged, to be assessed against the owner or operator of the vehicle, implement, or piece of machinery removed from the property, with the difference between the charges allowed by the city and the actual towing and storage charges to be assessed to

the property owner or other person controlling the property that requested the removal of the vehicle; and

(3) The request for removal of a vehicle, implement, or piece of machinery from the property to a towing and storage firm that accepts payment methods of cash, credit cards, or debit cards; and

(b) By requiring signage under § 27-51-1305 to include:

(1) The name, address, and telephone number of the towing and storage firm that may provide removal services from the parking lot;

(2) The amount of towing and storage charges that may be assessed against the owner or operator of the vehicle, implement, or other machinery; and

(3) Disclosing whether the towing and storage firm will accept the payment methods of cash, checks, credit cards, or debit cards.

(ii) An ordinance enacted under this subdivision (a)(1)(B) shall not conflict with this section.

(C) Prior to the removal of an abandoned vehicle, implement, or piece of machinery or a vehicle, implement, or piece of machinery parked without authority as provided by this section, the towing and storage firm shall obtain in writing from the property owner or agent a written statement that includes at a minimum the following:

(i) Identification of the property owner or agent, including name, address, and telephone number;

(ii) A statement that the property from which the vehicle, implement, or piece of machinery is to be removed is property owned or otherwise under the control of the agent requesting the removal;

(iii) That the vehicle, implement, or piece of machinery is deemed abandoned or has been parked on the property without authorization, as the case may be;

(iv) The make, model, and vehicle identification number or serial number of the vehicle, implement, or piece of machinery to be removed;

(v) The location to which the vehicle, implement, or piece of machinery will be removed, including the name, address, and telephone number of the towing and storage firm removing the vehicle, implement, or piece of machinery; and

(vi) The signature of the property owner or agent requesting removal of the vehicle, implement, or piece of machinery.

(D) A copy of the written statement shall be left with the property owner or the on-site agent, who shall make the written statement available for inspection upon request by any person claiming an interest in the removed vehicle, implement, or piece of machinery.

(E) The towing and storage firm removing the vehicle, implement, or piece of machinery shall retain a copy of the written statement for three (3) years and make the statement available during regular business hours upon request to any person claiming an interest in the removed vehicle, implement, or piece of machinery or upon request to any law enforcement officer or board investigator.



(F) Unless other arrangements have been made with a repair business, a vehicle, implement, or piece of machinery on the premises of a repair business shall be deemed abandoned if either:

(i) The vehicle, implement, or piece of machinery is unclaimed by the owner within forty-five (45) days; or

(ii) The debt is not paid within forty-five (45) days from the time the repair work is complete.

(G) A towing and storage firm shall not remove any abandoned vehicle, implement, or piece of machinery or improperly parked vehicle, implement, or piece of machinery without the authorization of the property owner or on-site agent as provided in this section except as may otherwise be authorized by the provisions of § 27-50-1201 et seq. or as directed by any law enforcement officer.

(H) A towing and storage firm removing a vehicle, implement, or piece of machinery as provided by this section shall not pay any compensation related to the removal of the vehicle, implement, or piece of machinery, whether as a referral fee or otherwise, to the owner or agent requesting the removal of the vehicle, implement, or piece of machinery.

(2)(A) Any person towing a vehicle, implement, or piece of machinery as provided by this section and any person towing a vehicle, implement, or piece of machinery without the authorization of the owner or the owner's agent, including towing pursuant to a directive of repossession from a holder of a security interest in the vehicle, implement, or piece of machinery, shall notify the local police department or sheriff's office within whose jurisdiction the vehicle, implement, or piece of machinery was removed of the removal within two (2) hours of taking possession of the vehicle, implement, or piece of machinery.

(B) The towing and storage firm may not charge a storage fee for the vehicle, implement, or piece of machinery for the time it is stored prior to the notification required to the local police department or sheriff's office.

(C) Each police department or sheriff's office receiving notification of the removal of a vehicle, implement, or piece of machinery as provided in this subsection shall maintain a log recording the following information related to the vehicle, implement, or piece of machinery:

(i) Make;

(ii) Model;

(iii) Vehicle identification number or serial number;

(iv) Date, time, and location of the removal; and

(v) Name, address, and telephone number of the person removing the vehicle, implement, or piece of machinery.

(D)(i) Each police department or sheriff's office that receives notification of the removal of a vehicle, implement, or piece of machinery as provided in this subsection shall within twenty-four (24) hours of notification provide to the towing and storage firm information

supplied from the records of the Office of Motor Vehicle of the Department of Finance and Administration, the Arkansas Crime Information Center, or, if there is evidence in the vehicle, implement, or piece of machinery indicating that it is registered in or from another state, the registration records from that state, the name and address of the last registered owner, and the name and address of the holder of any recorded lien on the vehicle, implement, or piece of machinery.

(ii) If the information under subdivision (a)(2)(D)(i) of this section is not available for an implement or piece of machinery, the police department or sheriff's office that receives notice of the removal shall provide at a minimum whether any record exists in the records of the Office of Motor Vehicle or the Arkansas Crime Information Center regarding the implement or piece of machinery.

(E)(i) In the event that readily available records fail to disclose the name of the owner of the vehicle, implement, or piece of machinery or any lienholder of record, the towing and storage firm shall perform a good faith search to locate documents or other evidence of ownership and lienholder information on or within the unattended or abandoned vehicle, implement, or piece of machinery.

(ii) For purposes of this subdivision (a)(2)(E), a "good faith search" means that the towing and storage firm checks the unattended or abandoned vehicle, implement, or piece of machinery for any type of license plate, license plate record, temporary permit, inspection sticker, decal, or other evidence that indicates a possible state of registration and title or other information related to the owner.

(3)(A) Following removal of an abandoned vehicle or vehicle parked without authority, possession of the vehicle, notice requirements to owners and lienholders, and procedures for sale of unclaimed vehicles shall be governed by the provisions of §§ 27-50-1208 — 27-50-1210.

(B)(i) The following procedures for the sale of an abandoned and unattended vehicle that is removed from a property as provided under §§ 27-50-1208 — 27-50-1210 shall apply in the same manner to an abandoned and unattended implement or piece of machinery:

- (a) Possession of the implement or piece of machinery;
- (b) Notice to owners and lienholders; and
- (c) Procedures for sale.

(ii) The towing and storage company shall have a first priority possessory lien on the implement or piece of machinery and its contents for all reasonable charges for towing, recovery, and storage subject to the limits provided by ordinance if one is in effect.

(iii) Except as provided under subdivision (a)(3)(B)(iv) of this section, the lien against the implement or piece of machinery shall be perfected and all of the procedures related to the implement or piece of machinery shall be handled in the same manner as provided under § 27-50-1208(b)-(e) for abandoned and unattended vehicles.

(iv) If information on the owner or owners of an implement or piece of machinery that is in the possession of a towing and storage



company is not available pursuant to subdivision (a)(2)(D)-(E) of this section, the towing and storage company shall provide notice by publication in a newspaper of general circulation in the region from where the implement or piece of machinery was removed.

(C)(i) Notwithstanding any provision of law to the contrary and to the extent that the city of the first class, city of the second class, or incorporated town enacted an ordinance that limits the amount of towing and storage charges assessed against the owner or operator of the vehicle, implement, or piece of machinery, the towing and storage company shall have a first priority possessory lien limited to the amount allowed under the ordinance.

(ii) The towing and storage company may assess any remaining charges to the property owner or other person controlling the property who requested the vehicle, implement, or piece of machinery be removed from the property.

(b) A city attorney may refer a possible violation of this section or an ordinance enacted under this section to the Arkansas Towing and Recovery Board for investigation.

(c)(1) It shall be unlawful for a person to:

(A) Direct the removal of or to remove a vehicle, implement, or piece of machinery in violation of this section; and

(B) Violate or aid or abet any violation of this section.

(2)(A) A person who pleads guilty or nolo contendere to or is found guilty of any violation of this section is guilty of a Class B misdemeanor.

(B) The information related to a plea of guilty or nolo contendere to or conviction for a violation as provided under subdivision (c)(2)(A) of this section shall be reported to the Arkansas Towing and Recovery Board.

(3) The removal of each vehicle, implement, or piece of machinery in violation of this section shall constitute a distinct and separate offense.

**History.** Acts 1953, No. 344, § 1; 1969, No. 195, § 1; 1981, No. 433, § 1; A.S.A. 1947, § 75-1034; Acts 1987, No. 166, § 1; 1987, No. 828, § 1; 1989, No. 680, § 1; 1997, No. 841, § 1; 1999, No. 1279, §§ 1, 6; 2001, No. 328, § 3; 2005, No. 2211, § 1; 2007, No. 861, § 1; 2009, No. 681, § 1.

**Amendments.** The 2007 amendment

inserted “and subject to the rules of” in (a)(1)(A); inserted “the on-site” in (a)(1)(C) and (a)(1)(F)(i); added “or Arkansas Towing and Recovery Board investigator” at the end of (a)(1)(D); and added (a)(2)(D) and (a)(2)(E).

The 2009 amendment rewrote the section.

## CASE NOTES

### Abandonment.

Abandonment requires a manifest act which expresses the intent of the owner to forsake his or her property; property is abandoned when it has been thrown away,

or its possession voluntarily forsaken by the owner. *Routh Wrecker Serv., Inc. v. Wins*, 312 Ark. 123, 847 S.W.2d 707 (1993).



**27-50-1102. [Repealed.]**

**Publisher's Notes.** This section, concerning procedure to dismantle or destroy abandoned vehicles, was repealed by Acts 1997, No. 841, § 8. The section was de-

rived from Acts 1973, No. 816, § 1; A.S.A. 1947, § 75-1034.1; Acts 1987, No. 828, § 2; 1989, No. 680, § 2.

**SUBCHAPTER 12 — REMOVAL OF UNATTENDED OR ABANDONED VEHICLES**

## SECTION.

- 27-50-1201. Applicability.
- 27-50-1202. Definitions.
- 27-50-1203. Arkansas Towing and Recovery Board — Creation.
- 27-50-1204. Penalties.
- 27-50-1205. Tagging.
- 27-50-1206. Notice to storage firm.
- 27-50-1207. Removal of vehicles.
- 27-50-1208. Possessory lien and notice to owners and lienholders.

## SECTION.

- 27-50-1209. Foreclosure of liens.
- 27-50-1210. Nonjudicial public sale.
- 27-50-1211. Disposition of funds.
- 27-50-1212. Criminal penalties.
- 27-50-1213. Limitation on removing from the state.
- 27-50-1214. Rules of order or procedure.
- 27-50-1215. Summons, citation, and subpoena.

**A.C.R.C. Notes.** Acts 1993, No. 1000, repealed and impliedly reenacted §§ 27-50-1201, 27-50-1202, and 27-50-1204 — 27-50-1210.

**Publisher's Notes.** Former subchapter 12, concerning the removal of unattended or abandoned vehicles, was repealed by Acts 1989, No. 899, § 12. The former subchapter was derived from the following sources:

- 27-50-1201. Acts 1987 (1st Ex. Sess.), No. 42, § 1.
- 27-50-1202. Acts 1987 (1st Ex. Sess.), No. 42, § 9.
- 27-50-1203. Acts 1987 (1st Ex. Sess.), No. 42, § 3.
- 27-50-1204. Acts 1987 (1st Ex. Sess.), No. 42, § 4.
- 27-50-1205. Acts 1987 (1st Ex. Sess.), No. 42, § 5.
- 27-50-1206. Acts 1987 (1st Ex. Sess.), No. 42, § 2.
- 27-50-1207. Acts 1987 (1st Ex. Sess.), No. 42, § 6.
- 27-50-1208. Acts 1987 (1st Ex. Sess.), No. 42, § 6.
- 27-50-1209. Acts 1987 (1st Ex. Sess.), No. 42, § 7.
- 27-50-1210. Acts 1987 (1st Ex. Sess.), No. 42, § 8.

**Effective Dates.** Acts 1997, No. 250, § 258; Feb. 24, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act

1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 1997, No. 392, § 9; Mar. 6, 1997. Emergency clause provided: "It is hereby found and determined by the Eighty-First General Assembly of the State of Arkansas that the present law regulating the towing and recovery business in Arkansas does not contain criminal penalties and does not permit the board to charge late fees for licenses and permits; that these deficiencies in the law encourage unpermitted towing vehicles to continue to operate on the highways of Arkansas; and that these unpermitted towing vehicles

pose a significant threat to the health and highway safety of the driving public on Arkansas' public streets and highways. Therefore, in order to reduce this significant threat to the public's driving safety, an emergency is hereby declared to exist, and this act being necessary for the immediate preservation of the public peace, health, and safety, shall become effective on the date of its approval by the Governor. If the bill is neither approved or vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2001, No. 1830, § 8: Apr. 18, 2001. Emergency clause provided: "It is hereby found and determined by the Eighty-third General Assembly that uncertainty exists concerning the due process provided when unattended and abandoned vehicles and their contents are removed by a law enforcement officer in this state, and that additional procedures should be established whereby certain post-deprivation notice and opportunity for hearing be provided. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2007, No. 506, § 4: Mar. 26, 2007. Emergency clause provided: "It is found and determined by the General Assembly

of the State of Arkansas that current law regarding towing and storage, resulting possessory liens, and notice to owners and lienholders of the towed and stored vehicle has been interpreted to allow a possessory lien on items of a personal nature that are found in the content of a towed or stored vehicle; that most items of a personal nature have little if any value to a towing and storage firm worth securing through a possessory lien; and this act is immediately necessary to prevent an undue hardship from being placed on consumers in this state by depriving them of access to personal necessities because a possessory lien has been placed on items of a personal nature in their vehicle that has been towed and stored. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2009, No. 644, § 2: July 1, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the Arkansas Towing and Recovery Board is not currently receiving a portion of the fines; that the General Assembly intended the board to receive fines; and that this act is immediately necessary to provide clarity and correction to the law so that the Arkansas Towing and Recovery Board can collect fines related to towing violations. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2009."

## RESEARCH REFERENCES

**U. Ark. Little Rock L.J.** Survey — Property, 10 **U. Ark. Little Rock L.J.** 605.

## CASE NOTES

## ANALYSIS

Constitutionality.  
Common Law.

**Constitutionality.**

Where plaintiff left her vehicle unattended because of mechanical problems and claimed it was improperly towed, this subchapter did not violate her due process rights, as plaintiff could maintain a modern statutory or common law action in state court to recover towing and storage

fees paid and any damages occasioned by loss of use of the vehicle. *Davis v. Dahmm*, 763 F. Supp. 1010 (W.D. Ark. 1991).

**Common Law.**

Sections 27-50-1101, 27-50-1102, and 27-50-1201 — 27-50-1210 [repealed and reenacted] have not implicitly amended the common law rule now embodied in § 16-89-103, since the laws are not so inconsistent that they cannot stand together. *Routh Wrecker Serv., Inc. v. Wins*, 312 Ark. 123, 847 S.W.2d 707 (1993).

**27-50-1201. Applicability.**

(a) The provisions of this subchapter shall apply to any person, firm, organization, or other entity engaged in the towing or storage of vehicles in the State of Arkansas.

(b) The provisions of this subchapter shall not apply to the following tow vehicles and related equipment:

(1) Car carriers capable of carrying five (5) or more vehicles and which have federal Interstate Commerce Commission authority;

(2) Tow vehicles owned by a governmental entity and not used for commercial purposes; and

(3) Tow vehicles that are registered in another state, operating under federal Interstate Commerce Commission authority and which do not regularly do business or solicit business in the State of Arkansas. However, any tow vehicle for which this exemption is claimed must be in compliance with § 27-35-112.

**History.** Acts 1993, No. 1000, § 1; 2005, No. 1878, § 3.

**A.C.R.C. Notes.** The Interstate Commerce Commission, referred to in this section, was abolished by the Interstate Commerce Commission Termination Act of 1995, Pub. L. No. 104-88. The successor agency to the Interstate Commerce Com-

mission is the Surface Transportation Board.

**Publisher's Notes.** Former § 27-50-1201, concerning applicability, was repealed by Acts 1993, No. 1000, § 14, and impliedly reenacted by Acts 1993 No. 1000, § 14. The former section was derived from Acts 1989, No. 899, § 10.

**27-50-1202. Definitions.**

For the purposes of this subchapter, unless the context otherwise requires:

(1) "Abandoned" means any vehicle deemed to be unattended as defined in this section:

(A) As to which the owner has overtly manifested some intention not to retake possession; or



(B) Which remains unattended, whether in its first-found location or in another location to which it has been removed pursuant to this subchapter, for a period of thirty (30) days, during which period the owner has given no evidence of an intent to retake possession;

(2) "Consent" means towing, storage, or recovery of any vehicle, which towing, storage, or recovery is done with the permission of the owner or other person in charge of the vehicle;

(3) "Nonconsent" means towing, storage, or recovery of any unattended or abandoned vehicle as defined in this section or any disabled or inoperative vehicle for which the owner preference is waived by the owner or person in charge thereof;

(4) "Owner" of an unattended or abandoned vehicle shall in the absence of conclusive evidence to the contrary be deemed to be the person in whose name the vehicle is registered with the Office of Motor Vehicle of the Department of Finance and Administration or in whose name the vehicle is registered in any other state;

(5) "Owner preference" means the right of the owner, his or her agent, or any competent occupant of any disabled or inoperative vehicle to request some responsible and reasonable person, gratuitous bailee, or bailee for hire of his or her choosing to take charge and care of the vehicle;

(6) "Person" means any individual, partnership, corporation, association, or other entity;

(7) "Public way" means any road, highway, or street over which the public may travel, including the traveled surface and any berm or shoulder thereof. Nothing herein shall be applicable to vehicles left unattended or abandoned on private property and subject to § 27-50-1101 et seq.;

(8) "Removal" means that an officer of any law enforcement agency may request a towing and storage firm which is licensed by the Arkansas Towing and Recovery Board to engage in nonconsent towing of vehicles to:

(A) Remove and store any unattended or abandoned vehicle pursuant to this subchapter;

(B) Remove and store any disabled or inoperative vehicle for which the owner or person in charge thereof has waived his or her right to owner preference as defined in this section; or

(C) Remove and store any vehicle in which the operator was apprehended by law enforcement officers;

(9) "Tow vehicle" means any motor vehicle or related equipment subject to registration in the State of Arkansas which is used to tow, recover, upright, transport, or otherwise facilitate the movement of vehicles on public highways;

(10) "Unattended" means any vehicle left on public property without the consent of an authority in charge of the property or on or near a public way without some person, gratuitous bailee, or bailee for hire in possession of the vehicle and that:

(A) Is located within a distance of three feet (3') of the traveled surface of the public way;

(B) Is located on or near a public way at a distance of three feet (3') or more of the traveled surface of the public way for a period of twenty-four (24) hours or more;

(C) Is not located on or near a public way but is left for a period of forty-eight (48) hours or more;

(D) Does not remain in the custody of some responsible person following an accident where the operator has been removed to a hospital or is otherwise unable to make personal arrangements for the vehicle's care;

(E) Was operated to a place of apprehension by law enforcement under police power and the operator thereof removed from the vehicle and taken into police custody;

(F) Is located upon any public right of way and due to geographic location, traffic density, or climatic conditions is creating an immediate and substantial hazard to the motoring public, as determined by a law enforcement officer; or

(G) Is subject to seizure by law enforcement under either a statute, the Arkansas Rules of Criminal Procedure, or a lawful court order; and

(11) "Vehicle" means any device by which a person or thing may be transported upon a public highway and which is of the type subject to registration in Arkansas.

**History.** Acts 1993, No. 1000, § 2; 1997, No. 381, § 1; 1997, No. 392, § 1; 1999, No. 1279, § 4; 2001, No. 1830, §§ 1, 2; 2007, No. 1053, § 1.

**Publisher's Notes.** Former § 27-50-1202, concerning definitions, was repealed by Acts 1993, No. 1000, § 14, and impliedly reenacted by Acts 1993, No. 1000, § 2. The former section was derived from Acts 1989, No. 899, § 1.

**Amendments.** The 2007 amendment substituted "Does not remain" for "Which vehicle remains not" in (10)(D); substituted "is creating an immediate and" for "creates a" in (10)(F); and in (10)(G), substituted "Is" for "Which vehicle, whether on public property on or near a public way or otherwise, is," inserted "either a statute," and substituted "a" for "pursuant to"; and made related and stylistic changes.

## CASE NOTES

### Abandoned.

Abandonment requires a manifest act which expresses the intent of the owner to forsake his or her property; property is abandoned when it has been thrown away, or its possession voluntarily forsaken by the owner. *Routh Wrecker Serv., Inc. v. Wins*, 312 Ark. 123, 847 S.W.2d 707 (1993).

Where a towing company sold an arrest-

ee's truck, the arrestee's due process claim survived summary judgment because, inter alia, (1) the towing company was acting under color of state law, and (2) Ark. R. Crim. P. 15.2 applied rather than the Arkansas Removal of Unattended or Abandoned Vehicles statute, § 27-50-1201 et seq., since the truck was not "abandoned" or "unattended." *Smith v. In-sley's, Inc.*, 499 F.3d 875 (8th Cir. 2007).

## 27-50-1203. Arkansas Towing and Recovery Board — Creation.

(a)(1) There is hereby created the Arkansas Towing and Recovery Board consisting of nine (9) members appointed by the Governor and confirmed by the Senate, who shall serve terms of three (3) years.



(2)(A) Four (4) members shall be appointed from the towing industry and shall be licensed by the board to engage in nonconsent towing, with one (1) each of the members being a resident of each of the four (4) congressional districts.

(B) Two (2) members who are permitted to engage in the consent-only business shall be appointed from the state at large.

(C) Two (2) members who are not associated with the towing industry shall be appointed from the state at large.

(D) One (1) member shall be appointed from the insurance industry.

(b) The appointed board members shall be residents of the State of Arkansas at the time of appointment and throughout their terms.

(c)(1) The members shall determine by majority vote of the quorum of the board who shall serve as chair.

(2) The chair shall be elected annually from the membership of the board.

(d)(1) The board shall meet at such times and places that the chair deems necessary, but no meeting shall be held outside the State of Arkansas.

(2) Five (5) of the members of the board shall constitute a quorum for the purpose of transacting business.

(3) All actions of the board shall be by a quorum.

(e)(1) The board shall promulgate rules and regulations to carry out the intent of this subchapter and shall regulate the towing industry, including:

(A) Establishing reasonable licensing, insurance, and equipment requirements for any person engaging in towing and related services for safety purposes under this subchapter;

(B) Establishing reasonable tow truck safety requirements for any tow vehicle as defined in this subchapter;

(C) Establishing a procedure to accept and investigate complaints from a consumer who claims that he or she has been overcharged for nonconsent towing, recovery, or storage fees;

(D) Determining and sanctioning excessive or unnecessary non-consent towing fees, recovery, and storage charged to consumers;

(E) Requiring all entities permitted, licensed, or regulated under this subchapter to provide to the board all documents in response to information requests by the board pursuant to the investigation of consumer complaints or board complaints against the permittee or licensee;

(F) Requiring all entities permitted, licensed, or regulated under this subchapter to provide itemized billing for towing or storage fees that explains how the charges were calculated; and

(G) Requiring all entities permitted, licensed, or regulated under this subchapter to maintain a copy of their current maximum rate schedule posted in a conspicuous place and readily accessible to the public.



(2) The promulgation and adoption of rules and regulations shall in all respects be in the manner provided by the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(3) After the promulgation and adoption of rules or regulations, any proposed change to add to, amend, repeal, or change any of the rules or regulations shall not have effect until reviewed and approved by the Subcommittee on Administrative Rules and Regulations of the Legislative Council subsequent to the time that the General Assembly next meets in regular session unless a finding exists that imminent peril to the public health, safety, or welfare requires immediate adoption, amendment, or repeal of the rules or regulations.

(f)(1) The board shall have the authority to levy applicable towing business license fees not to exceed one hundred dollars (\$100) per license, and the board shall have the authority to levy an applicable tow vehicle safety permit fee not to exceed fifty dollars (\$50.00) per tow vehicle safety permit.

(2) Furthermore, the board shall also have the authority to impose late filing fees in an amount not to exceed the original amount of the license fee or safety permit fee.

(g)(1) The board shall have the authority to employ and discharge any personnel as may be necessary to administer and enforce the provisions of this subchapter and the rules and regulations promulgated hereunder.

(2) The board shall employ investigators to investigate consumer complaints related to overcharging for nonconsent towing, recovery, or storage fees, violations of § 27-50-1101, this subchapter, and violations of the rules promulgated by the board under this subchapter.

(h) The board shall have the authority to obtain office space, furniture, stationery, and other proper supplies and conveniences reasonably necessary to carry out the provisions of this subchapter.

(i) Each member of the board may receive expense reimbursement and stipends in accordance with § 25-16-901 et seq.

(j) The board shall have the authority to establish a maximum amount to be charged by a towing business for each notification to an owner and a lienholder as required by this subchapter.

**History.** Acts 1989, No. 899, § 9; 1993, No. 1000, § 3; 1997, No. 250, § 246; 1997, No. 392, § 2; 1999, No. 1279, § 2; 2005, No. 1878, § 2; 2007, No. 861, §§ 2-4; 2007, No. 1053, § 2.

**A.C.R.C. Notes.** Acts 1993, No. 806, § 3 provided: "The board is to be reimbursed for meals and lodging, and any other expenses necessary when conducting board business, as well as reimbursed for mileage at the rate allowed for state employees. The board members will receive a per diem at the rate of fifty dollars (\$50) for conducting board business."

Acts 1995, No. 6, § 3, provided:

**"BOARD MEMBER EXPENSES.** The Board is to be reimbursed for meals and lodging, and any other expenses necessary when conducting board business, as well as being reimbursed for mileage at the rate allowed for state employees. The Board Members will receive per diem at the rate of fifty dollars (\$50) for conducting board business."

Pursuant to § 1-2-207, § 27-50-1203(e)(1)(D) is set out above as amended by Acts 2007, No. 1053, § 2. Acts 2007, No. 861, § 2, also amended § 27-50-1203(e)(1)(D) as follows: "(D) Determining and sanctioning excessive or unnecessary

non-consent towing fees or storage fees, or both, charged to consumers;”.

**Publisher's Notes.** Acts 1993, No. 1000, § 3, provided, in part, that the members serving on the board on the effective date of the act shall continue to serve the remainder of their terms and members appointed thereafter shall be appointed so as to phase in the requirements of the act as rapidly as practical.

Acts 1993, No. 1000, § 3, also provided that after the board's initial promulgation and adoption of rules and regulations, unless a finding exists that imminent peril to the public health, safety, or welfare requires immediate adoption, amendment or repeal of any such rule or regulation, any subsequent proposed amendments or changes to the initial

rules and regulations shall not have effect until after such time the Arkansas General Assembly next meets in regular session.

**Amendments.** The 2007 amendment, in (e)(1)(A), substituted “equipment” for “safety equipment,” deleted “nonconsent” preceding “towing,” and inserted “for safety purposes”; in (e)(1)(C) and (g)(2), deleted “consent or” and inserted “recovery”; inserted “recovery, and storage” in (e)(1)(D); added (e)(1)(E) and redesignated the remaining subsections accordingly; substituted “fifty dollars (\$50.00)” for “twenty-five dollars (\$25.00)” in (f)(1); in (g)(2), substituted “investigators” for “an investigator” and inserted “§ 27-50-1101”; and made related changes.

## 27-50-1204. Penalties.

(a)(1) The owner of a vehicle and the person who left the vehicle unattended or abandoned or any owner or operator waiving an owner's preference shall be liable for all reasonable costs of towing, recovery, storage, and other incidental costs related to such a removal.

(2) If the vehicle is sold by foreclosure under § 27-50-1209, the owner or operator shall be liable for such costs in excess of the proceeds of the sale of the vehicle.

(b) Any law enforcement agency that without reasonable justification fails to provide information to the towing and storage firm within twenty-four (24) hours as prescribed by this subchapter shall be liable to the towing and storage firm for any accrued storage fees between the expiration of the twenty-four-hour period and such time as the information is provided.

(c) Upon any complaint or on its own initiative when the Arkansas Towing and Recovery Board has reason to believe that a law enforcement officer failed to adhere to an owner preference request or otherwise violated this subchapter, the board may investigate the matter and submit its findings to proper law enforcement authorities.

(d) Any person, excluding a law enforcement officer, who is determined by the board after reasonable notice and opportunity for a fair and impartial hearing held in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq., to have committed an act that is in violation of this subchapter or any rules and regulations promulgated under this subchapter is subject to civil penalties prescribed by the board, including monetary penalties not to exceed five thousand dollars (\$5,000) or the suspension or revocation of any towing license or permit, or both.

(e) Nothing in this section shall be construed to limit the right to seek judicial review of any determination of the board pursuant to the provisions of the Arkansas Administrative Procedure Act, § 25-15-201 et seq.



(f)(1) A penalty assessed by the board shall be paid no later than fifteen (15) days after the conclusion of the appeals process under the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(2) If not paid timely, a license or permit may be suspended until the penalty is paid.

**History.** Acts 1993, No. 1000, § 10; 2005, No. 1878, § 4; 2005, No. 2211, § 2; 2007, No. 861, §§ 5, 6; 2007, No. 1053, §§ 3-5.

**A.C.R.C. Notes.** Pursuant to § 1-2-207, § 27-50-1204(f) is set out above as created by Acts 2007, No. 1053, § 5. Acts 2007, No. 861, § 6, also created § 27-50-1204(f) as follows: “(f)(1) All penalties assessed by the board shall be paid no later than fifteen (15) days after the appeal process under the Arkansas Administrative Procedures Act, § 25-15-201 et seq., had passed.

“(2) The failure to remit payment of penalties may result in the suspension of the license or permit until the penalty is paid.”

**Publisher's Notes.** Former § 27-50-1204, concerning penalties, was repealed by Acts 1993, No. 1000, § 14, and impliedly reenacted by Acts 1993, No. 1000, § 10. The former section was derived from Acts 1989, No. 899, § 3.

**Amendments.** The 2007 amendment added the (a)(1) and (a)(2) designations; in (a)(1), substituted “vehicle and” for “vehicle or” and inserted “or any owner or operator waiving an owner’s preference”; added “If the vehicle is sold by foreclosure under § 27-50-1209, the owner or operator shall be liable for such costs” in (a)(2); substituted “five thousand dollars (\$5000)” for “five hundred dollars (\$500)” in (d); added (f); and made related changes.

## CASE NOTES

### Not Entitled to Monetary Award.

In an owner’s action seeking recovery of an all-terrain vehicle (ATV), a monetary award in favor of a wrecker service was erroneous because the wrecker service’s liens under §§ 18-45-201 and 18-45-402

were satisfied upon receipt of the sum generated from the sale of the ATV and its lack of perfection of its lien under § 27-50-1208 precluded a finding of a possessory lien. *Payne v. Donaldson*, 2010 Ark. App. 255, — S.W.3d — (2010).

### 27-50-1205. Tagging.

Any law enforcement officer or code enforcement officer as defined by municipal ordinance observing a vehicle on or near a public way which appears to be unattended or abandoned shall:

(1)(A) Order immediate removal of any unattended, abandoned, disabled, or inoperative vehicle:

(i) Located within three feet (3') of the traveled surface of a public way; or

(ii) That appears to create an immediate and substantial hazard to the public; and

(B) Log the removal order accordingly; or

(2) Tag any unattended, abandoned, disabled, or inoperative vehicle located at a distance of three feet (3') or more by affixing securely a colored form or other easily observable sticker. The tag or sticker shall show:

(A) The date and time of tagging;

(B) That the vehicle will be removed pursuant to this subchapter unless the vehicle is removed within twenty-four (24) hours;



- (C) The location and telephone number where more information may be obtained; and
- (D) The identification of the officer.

**History.** Acts 1993, No. 1000, § 5; 1999, No. 1279, § 3; 2007, No. 100, § 1; 2007, No. 1053, § 6.

**Publisher's Notes.** Former § 27-50-1205, concerning tagging, was repealed by Acts 1993, No. 1000, § 14, and impliedly reenacted by Acts 1993, No. 1000, § 5. The former section was derived from Acts 1989, No. 899, § 4.

**Amendments.** The 2007 amendment by No. 100 inserted "or code enforcement officer as defined by municipal ordinance" in the introductory paragraph.

The 2007 amendment by No. 1053 rewrote (1).

### 27-50-1206. Notice to storage firm.

(a)(1) Any order issued by a law enforcement officer to a licensed towing and storage firm to remove and store an unattended or abandoned vehicle shall provide information supplied from the records of the Office of Motor Vehicle of the Department of Finance and Administration, Arkansas Crime Information Center records, or the motor vehicle records of any other state indicating the name and address of the last registered owner, the name and address of the holder of any recorded lien on the vehicle, and the vehicle identification or serial number of the vehicle.

(2) If there is evidence in the vehicle indicating that the vehicle is registered in another state, the information shall be supplied from the motor vehicle records of that state.

(3)(A) If a law enforcement officer or other official issues a hold against the release of the vehicle, the law enforcement officer's order to remove and store the vehicle shall include a written explanation for the issuance of the hold.

(B) When the hold on the vehicle is released, the law enforcement officer or other official who issued the hold shall provide written notice of the release to the towing and storage firm.

(b)(1) In the event that readily available records fail to disclose the name of the owner or any lienholder of record, the law enforcement officer or his or her agency shall notify in writing the towing and storage firm that after receiving the notice the firm shall perform a good faith search to locate documents or other evidence of ownership and lienholder information on or within the unattended or abandoned vehicle.

(2) For purposes of this subsection, a "good faith search" means that the towing and storage firm checks the unattended or abandoned property for any type of license plate, license plate record, temporary permit, inspection sticker, decal, or other evidence that may indicate a possible state of registration and title.

(3) The towing and storage firm shall provide in writing to the law enforcement officer or agency the results of the search and, if appropriate, certify that a physical search of the unattended or abandoned vehicle disclosed that no ownership documents were found and that a good faith search was conducted.

(c)(1) Within not more than twenty-four (24) hours from the order to remove, the officer involved or his or her agency shall contact the towing and storage firm and advise the firm of any unusual circumstances causing the delay of the required information that was not available to the officer at the time the order to remove was issued.

(2) The officer or agency shall provide the delayed information immediately upon receipt.

(d) When a vehicle is removed pursuant to this subchapter by law enforcement and is subject to impoundment or seizure pursuant to police power or any lawful court order, the law enforcement officer shall provide to the towing and storage firm a written statement setting forth the conditions of release of the vehicle.

**History.** Acts 1993, No. 1000, § 6; 1997, No. 841, § 2; 2001, No. 1830, § 3; 2005, No. 1878, § 5; 2007, No. 1053, § 7.

**Publisher's Notes.** Former § 27-50-1206, concerning notice to storage firm, was repealed by Acts 1993, No. 1000, § 14, and impliedly reenacted by Acts

1993, No. 1000, § 6. The former section was derived from Acts 1989, No. 899, § 5.

**Amendments.** The 2007 amendment added (a)(3); inserted "in writing" in (b)(1) and (b)(3); and inserted "after receiving the notice" in (b)(1).

## **27-50-1207. Removal of vehicles.**

(a)(1) Any law enforcement agency which directs the removal of unattended or abandoned vehicles shall adopt a written vehicle removal policy, the provisions of which shall not be in conflict with this subchapter.

(2)(A) Any vehicle removal policy shall provide that owner preference as defined by this subchapter shall be offered to the owner, to his or her agent, or to any competent occupant of any disabled or inoperative vehicle except in those instances where an emergency exists or where the immediate clearing of a public thoroughfare mandates an expedited towing service.

(B)(1) If a law enforcement officer fails to provide an owner of a vehicle with an owner preference in a nonemergency situation, then the owner may file a complaint with the law enforcement agency that employs the law enforcement officer or the Arkansas Towing and Recovery Board, or both.

(2) Nothing in this subsection precludes a person who has been denied the right of owner preference from seeking any other legal or equitable remedy.

(3) Nothing in this section shall be construed to authorize the towing of a vehicle in violation of other provisions of this subchapter.

(b) All law enforcement officers shall comply with the policies prescribed by their agencies as to the removal of any unattended or abandoned vehicle as defined by this subchapter.

(c) No law enforcement officer shall:

(1) Suggest or recommend any particular towing and storage firm to the owner, his or her agent, or any competent occupant of any disabled or inoperative vehicle; or



(2) Accept gifts or special consideration from the owner of a towing business or anyone acting on the owner's behalf in relation to removal of vehicles as provided by this subchapter.

(d) Upon request, any law enforcement officer or his or her agency who orders a removal pursuant to this subchapter shall provide to the owner, to his or her agent, or to any competent occupant of the removed vehicle the name, location, and telephone number of the towing and storage firm requested to remove and store the vehicle.

(e)(1) Should the owner or lienholder of a vehicle removed pursuant to this subchapter consider that the removal of the vehicle was not legally justified or properly subject to a law enforcement hold, the owner or lienholder may within thirty (30) days after removal or within thirty (30) days after the receipt of notification of any law enforcement hold from the towing and storage firm, whichever is later, seek a review to determine whether the unattended or abandoned property was wrongfully removed or withheld from the owner through the following procedures:

(A) In the case of a vehicle removed by or at the direction of a state agency, by filing a petition with the Arkansas State Claims Commission;

(B) In the case of a vehicle removed by or at the direction of a county or city agency and when the county or city has established an administrative review process, by filing a petition according to the established administrative review process; and

(C) In all other cases, including when the county or city has failed to establish an administrative review process, by filing a petition in the circuit court in the county where the unattended or abandoned vehicle is stored.

(2) In the case of a final decision reached through a county or city administrative review, the owner or lienholder may appeal an adverse ruling to the circuit court in the county where the unattended or abandoned vehicle is stored.

(3) The petition shall name the state agency ordering the tow as a respondent and, when filed in circuit court, shall also name the towing company among the respondents if the towing company still possesses the vehicle. In the case of removal originated by an agency of a political subdivision of the state, the petition shall name the county, city, or town as a respondent.

(4)(A) If the vehicle and its contents are subject to impoundment or seizure by law enforcement pursuant to the Arkansas Rules of Criminal Procedure or pursuant to an order by any court, Rule 15 of the Arkansas Rules of Criminal Procedure shall exclusively govern the release of the vehicle and its contents to the extent applicable.

(B) Nothing in this section shall operate to defeat the lien held by the towing company under § 27-50-1208.

(f)(1) Upon the filing of the petition, the owner or lienholder may have the unattended or abandoned vehicle and contents released upon posting with the commission, with the court, or with the city or county



clerk or other person designated by a political subdivision, as the case may be, a cash or surety bond equal to the amount of the charges for the towing and storage to ensure the payment of such charges in the event that he or she does not prevail.

(2)(A) Upon the posting of the bond and the payment of the applicable fees, the administrative decision maker, commission, or court, as the case may be, shall issue an order notifying the towing company and the respondent agency of the posting of the bond.

(B) Upon service of receipt of the order, the towing company shall release the stored property.

(3) At the time of release, after reasonable inspection, the owner or the lienholder shall give a receipt to the towing and storage firm reciting any claim for known loss or damage to the unattended or abandoned property or the contents thereof.

(g) Upon determining the respective rights of the parties, the final order of the administrative decision maker, commission, or court, as the case may be, shall provide for immediate payment in full of the reasonable recovery, towing, and storage fees by the owner or lienholder of the unattended or abandoned property or by the respective law enforcement agency.

(h) In cases where the owner or lienholder has posted a cash or surety bond to obtain immediate release and the owner or lienholder is found to be responsible for reasonable recovery, towing, and storage fees, the administrative decision maker, commission, or court, as the case may be, shall declare the bond to be forfeited, with the amount paid to the towing and storage firm to cover reasonable recovery, towing, and storage fees.

(i) Nothing in this section shall be construed to waive the sovereign immunity of the State of Arkansas nor any immunity granted to its political subdivisions.

**History.** Acts 1993, No. 1000, § 4; 1995, No. 815, § 1; 1997, No. 392, § 3; 2001, No. 1830, § 4; 2005, No. 1878, § 6; 2007, No. 1053, §§ 8–10.

**Publisher's Notes.** Former § 27-50-1207, concerning possession of vehicle subject to lien, was repealed by Acts 1993, No. 1000, § 14, and impliedly reenacted by Acts 1993, No. 1000, § 4. The former section was derived from Acts 1989, No. 899, § 2.

**Amendments.** The 2007 amendment added (a)(2)(B)(2); added the (c)(1) and (c)(2) designation; deleted “except in strict

compliance with his or her agency's vehicle removal policy, nor shall law enforcement officers” in (c)(1); in (e)(1), inserted “or properly subject to a law enforcement hold” and “of any law enforcement hold” and substituted “thirty (30)” for “twenty (20)” twice; inserted “if the towing company still possesses the vehicle” in (e)(3); added the (e)(4)(A) designation and added (e)(4)(B); redesignated former (f)(2) as present (f)(2)(A) and (f)(2)(B); inserted “service of” in (f)(2)(B); and made related and stylistic changes.

## CASE NOTES

### Notice.

Trial court erred in dismissing a creditor's action against a debtor to recover the

balance on an installment contract for the purchase of an automobile where it was a towing company's duty, as the holder of a

first-priority possessory lien on the wrecked automobile, to notify the debtor of its intent to foreclose on the lien by selling the automobile; the towing company had a first-priority possessory lien

on the collateral pursuant to the express terms of subdivision (a)(1) of this section. *Primus Fin. Servs. v. Seitz*, 102 Ark. App. 146, 283 S.W.3d 235 (2008).

### **27-50-1208. Possessory lien and notice to owners and lienholders.**

(a)(1) The towing and storage firm shall have a first priority possessory lien on the vehicle and its contents for all reasonable charges for towing, recovery, and storage for which the owner is liable.

(2)(A) A possessory lien under this section attaches to not only the vehicle and its contents but also any trailer attached to the vehicle at the time it is towed and any contents of such trailer including, but not limited to, other vehicles or boats.

(B) A lien under this section shall not extend to the following items, without limitation:

- (i) Personal or legal documents;
- (ii) Medications;
- (iii) Child-restraint seating;
- (iv) Wallets or purses and the contents of such;
- (v) Prescription eyeglasses;
- (vi) Prosthetics;
- (vii) Cell phones;
- (viii) Photographs; and
- (ix) Books.

(C) The items described in subdivision (a)(2)(B) of this section shall be released without charge by the towing and storage firm to the owner or operator of the motor vehicle or his or her duly authorized representative.

(b) The lien shall be perfected by:

(1) Maintaining possession;

(2) Mailing notice to the owner or owners and lienholders as shown on the data provided by the law enforcement agency involved as prescribed by this subchapter; or

(3) In the case of a vehicle removed pursuant to § 27-50-1101, giving notice to the last known registered owner or owners and lienholders as provided from the records of the:

(A) Office of Motor Vehicle of the Department and Finance and Administration;

(B) Arkansas Crime Information Center; or

(C) If known, motor vehicle records of any other state where the vehicle's registration indicates the name and address of the last registered owner and the name and address of the holder of any recorded lien, if any, on the vehicle.

(c)(1) The notice shall be mandatory and by certified mail, return receipt requested.

(2) The notice shall be posted not sooner than two (2) business days but within eight (8) business days after the date that the towing and storage firm receives the vehicle.

(d)(1) If within forty-eight (48) hours the ownership and lienholder information has not been received from the law enforcement agency requesting the removal of a vehicle pursuant to this subchapter, the towing and storage firm shall obtain information concerning the last known registered owner or owners and lienholder or lienholders as provided from the records of the:

(A) Office of Motor Vehicle;

(B) Arkansas Crime Information Center; or

(C) If known, motor vehicle records of any other state where the vehicle's registration indicates the name and address of the last registered owner and the name and address of the holder of any recorded lien, if any, on the vehicle.

(2)(A) For the purpose of notices required by this section, if the data records of the Office of Motor Vehicle or the office of motor vehicles for the state where the vehicle is registered, if known, do not contain any information as to the last known registered owner or owners and lienholder or lienholders, notice by publication one (1) time in one (1) newspaper of general circulation in the county where the vehicle was found unattended, abandoned, or improperly parked is sufficient notice under this section.

(B) The notice by publication may contain multiple listings of vehicles, shall be published within the time requirements prescribed for notice by certified mail, and shall have the same contents required for a notice by certified mail.

(e)(1) The notice shall contain the following information:

(A) The year, make, model, and vehicle identification number of the vehicle towed;

(B) The name, address, and telephone number of the storage facility;

(C) That the vehicle is in the possession of that towing and storage firm under police order, describing the general circumstances of any law enforcement or other official hold on the vehicle;

(D) That towing, storage, and administrative costs are accruing as a legal liability of the owner;

(E) That the towing and storage firm claims a first priority possessory lien on the vehicle and its contents for all such charges;

(F) That unless claimed within forty-five (45) days, the vehicle and its contents will be dismantled, destroyed, or sold at public sale to the highest bidder;

(G) That the failure to exercise the right to reclaim the vehicle and its contents within the time prescribed by this section constitutes a waiver by the owner and lienholder of all right, title, and interest in the vehicle and its contents and constitutes consent to the sale, dismantling, or destruction of the vehicle and its contents;

(H) That the owner or lienholder may retake possession at any time during business hours by appearing, proving ownership, and



releasing the law enforcement or other official hold, if any, and by paying all charges or by other written arrangement between the owner or lienholder and the towing and storage firm;

(I) That should the owner consider that the original taking was not legally justified, he or she has a right for thirty (30) days to contest the original taking as described by § 27-50-1207; and

(J) That the owner of the vehicle or operator or his or her authorized representative may recover without charge any item described in subdivision (a)(2)(B) of this section by providing within forty-five (45) days to the towing and storage firm proof that the claimant is the registered owner of the vehicle or has been authorized by the registered owner of the vehicle to take possession of the items.

(2) A notice to an owner of a vehicle deemed abandoned on the premises of an automobile repair facility under § 27-50-1101 shall also advise that the automobile repair person holds an absolute lien on the vehicle under § 18-45-201 et seq.

(f) Nothing in this section is to preclude the owner, lienholder, or agent from making alternative arrangements within the two-day to eight-day period with the towing and storage firm, waiving his or her rights to the notice requirement.

(g) When any vehicle reclaimed from the towing and storage firm by a lienholder contains contents not subject to the lienholder's interest, the lienholder shall be accountable to the owner of the contents in the same manner as the lienholder would in any other case of repossession of a vehicle, and the towing and recovery firm releasing the vehicle and its contents shall be relieved from all responsibility for the contents.

(h)(1) Any towing and storage firm that in good faith follows the procedures of this subchapter or the provisions of § 27-50-1101 shall not be subject to claims of unlawful detainer or conversion for vehicles or their contents for maintaining property pursuant to the possessory lien as provided by this subchapter.

(2) Any challenge to the removal and holding of an unattended or abandoned vehicle as provided by this subchapter shall be controlled exclusively by the provisions of § 27-50-1207.

(3) Nothing in this section shall be construed to limit liability of the towing and storage firm for any other act or omission otherwise actionable under statutory or common law.

**History.** Acts 1993, No. 1000, § 7; 1997, No. 392, § 4; 1997, No. 841, § 3; 1999, No. 1279, § 5; 2001, No. 1830, § 5; 2005, No. 1878, § 7; 2005, No. 2211, § 3; 2007, No. 506, §§ 1, 2; 2007, No. 861, §§ 7, 8; 2007, No. 1053, § 11; 2009, No. 483, § 4.

**A.C.R.C. Notes.** Pursuant to § 1-2-207, this section is set out above as amended by Acts 1997, No. 841. This section was also amended by Acts 1997, No. 392 to read as follows: "(a) The towing-

storage firm shall have a possessory lien on the vehicle and its contents for all reasonable charges of towing, recovery, and storage for which the owner is liable.

"(b) Such lien shall be perfected by:

"(1) Maintaining possession; and

"(2) Giving notice to the owner or owners and lienholders as shown on the data provided by the law enforcement agency involved as prescribed by this subchapter.

"(c) Such notice shall be by certified mail, return receipt requested, and shall

be posted not sooner than five (5) working days, but within eight (8) working days of the time that said vehicle is logged in at the storage facility.

“(d) The notice shall contain the following information:

“(1) The name, address, and telephone number of the storage facility;

“(2) That the addressee’s vehicle is in the possession of that towing-storage firm under police order, describing the circumstances;

“(3) That towing, storage, and administrative costs are accruing as a legal liability of the owner;

“(4) That the towing-storage firm claims a possessory lien for all of such charges;

“(5) That the owner may retake possession at any time during business hours by appearing, proving ownership, and paying all charges or by other written arrangement between himself or herself and the towing-storage firm; and

“(6) That, should the owner consider that the original taking was improper or not legally justified, he has a right to contest such original taking in a court of competent jurisdiction.

“(e) Nothing in this section is to preclude the owner or his agent from making alternative arrangements within the five-day to eight-day time period with the towing-storage firm waiving his or her rights to the notice requirement.”

Pursuant to § 1-2-207, § 27-50-1208(b) is set out above as amended by Acts 2007, No. 1053, § 11. Section 27-50-1208(b) was also amended by Acts 2007, No. 861, § 7, to read as follows:

“(b) The lien shall be perfected by:

“(1) Maintaining possession;

“(2) Mailing notice to the owner or owners and lienholders as shown on the data provided by the law enforcement agency involved as prescribed by this subchapter; or

“(3) In the case of a vehicle removed pursuant to § 27-50-1101, giving notice to the last known registered owner or owners and lienholders as provided from the records of the Office of Motor Vehicle or the Arkansas Crime Information Center or the motor vehicle records of any other state in which the vehicle is registered indicating the name and address of the last registered owner and the name and

address of the holder of any recorded lien on the vehicle.”

Pursuant to § 1-2-207, § 27-50-1208(d)(1) is set out above as amended by Acts 2007, No. 1053, § 11. Section 27-50-1208(d)(1) was also amended by Acts 2007, No. 861, § 8, to read as follows:

“(d)(1) If within forty-eight (48) hours the ownership and lienholder information has not been received from the law enforcement agency requesting the removal of a vehicle pursuant to this subchapter, the towing and storage firm shall obtain information concerning the last known registered owner or owners and lienholders as provided from the records of the Office of Motor Vehicle or the Arkansas Crime Information Center or the motor vehicle records of any other state in which the vehicle is registered indicating the name and address of the last registered owner and the name and address of the holder of any recorded lien on the vehicle.”

Pursuant to § 1-2-207, § 27-50-1208(e)(10) is set out above as amended by Acts 2007, No. 1053, § 11. Section 27-50-1208(e)(10) was also amended by Acts 2007, No. 506, § 2, to read as follows:

“(10) That the owner, operator, or his or her authorized representative may recover without charge possession of any items identified in § 27-50-1208(a)(2)(B) by providing within forty-five (45) days the towing and storage firm with proof that the claiming person is the registered owner of the vehicle or has been authorized by the registered owner of the vehicle to obtain such property; and”.

**Publisher’s Notes.** Former § 27-50-1208, concerning possessory liens, was repealed by Acts 1993, No. 1000, § 14, and impliedly reenacted by Acts 1993, No. 1000, § 7. The former section was derived from Acts 1989, No. 899, § 6.

**Amendments.** The 2007 amendment by No. 506 added the (a)(1) designation and (a)(2); added (e)(10) and redesignated former (e)(1) as present (e)(11); and made related changes.

The 2007 amendment by No. 861 added “or the Arkansas ... on the vehicle” at the end of (b)(3); and substituted “Office of Motor Vehicle ... lien on the vehicle” for “office” in (d)(1).

The 2007 amendment by No. 1053 added (a)(2), (b)(3)(B) and (C), (d)(1)(B) and (C), and (e)(10); substituted “Office of Motor Vehicle or the office of motor ve-



hicles for the state where the vehicle is registered, if known" for "office" in (d)(2)(A); substituted "thirty (30)" for "twenty (20)" in (e)(9); deleted "merely" preceding "maintaining" in (h)(1); in-

serted "and holding" in (h)(2); and made related and stylistic changes.

The 2009 amendment redesignated (e), and made minor stylistic changes.

## CASE NOTES

### ANALYSIS

Failure to Perfect Lien.  
Notice of Removal.

#### Failure to Perfect Lien.

In an owner's action seeking recovery of an all-terrain vehicle (ATV), a monetary award in favor of a wrecker service was erroneous because the wrecker service's liens under §§ 18-45-201 and 18-45-402 were satisfied upon receipt of the sum generated from the sale of the ATV and its

lack of perfection of its lien under this section precluded a finding of a possessory lien. *Payne v. Donaldson*, 2010 Ark. App. 255, — S.W.3d — (2010).

#### Notice of Removal.

Where alleged owner of vehicle failed to register it in his own name, notice given by towing firm to the last registered owner in accordance with this section was constitutionally sufficient. *Muhammed v. Routh Wrecker Serv.*, 14 F.3d 24 (8th Cir. 1994).

## 27-50-1209. Foreclosure of liens.

(a)(1) The failure of the owner or lienholder to exercise his, her, or its right to reclaim the vehicle and its contents within forty-five (45) days of the posting or publication of notice to owners and lienholders constitutes a waiver by the owner or lienholder of all right, title, and interest in the vehicle and its contents.

(2) If a law enforcement official or other official refuses to release any hold on the vehicle or its contents, the owner or lienholder has an additional twenty (20) days to reclaim the vehicle and its contents after the date when the hold is released.

(3)(A) The owner or lienholder may challenge any law enforcement official hold or other official hold under the procedures in § 27-50-1207(e).

(B) However, the provisions of § 27-50-1207(f) pertaining to release of the vehicle do not apply when the owner or lienholder challenges a law enforcement official hold or other official hold.

(b)(1) Except as provided in subsection (c) of this section, the towing and storage firm, municipality, or county that holds a perfected possessory lien on any vehicle and its contents not redeemed by its owner or security lienholder within the time frame provided by this section shall sell the vehicle and its contents at a nonjudicial public sale for cash.

(2) The sale shall not occur later than ninety (90) days after perfection of the lien or forty-five (45) days after the release of any law enforcement hold or other official hold, whichever is later.

(c) A vehicle that is held by a municipality or county on a storage lot owned and operated by the municipality or county may defer the public sale and make use of the vehicle for law enforcement purposes if:

(1) The municipality or county complies with the notice provisions of § 27-50-1208;



(2) The time frame as provided under subsection (a) of this section has expired; and

(3) The municipality or county enacts an ordinance that:

(A) Declares the municipality's or the county's policy regarding the deferral for law enforcement purposes;

(B) Charges a specific municipal or county official with the responsibilities of:

(i) Identifying the vehicles to be used by the municipality or county; and

(ii)(a) Declaring a future date to publicly sell the vehicle pursuant to § 27-50-1210.

(b) The date of the sale shall be a maximum of six (6) months following the passage of the time frame for an owner or lienholder to reclaim a vehicle under subsection (a) of this section or as soon as is practicable if circumstances arise that prevent the sale on the declared sale date; and

(C) Requires that the official ensure that the public sale proceed on the sale date declared in the ordinance.

(d)(1) The towing and storage firm, municipality, or county shall obtain written verification that the Arkansas Crime Information Center records do not list the vehicle as having been reported stolen.

(2) The verification shall be on a form prescribed by the center, the Office of Motor Vehicle of the Department of Finance and Administration, a municipal police department, a county sheriff's department, or the Department of Arkansas State Police.

(3) When the verification provided by this subsection is sought directly from the center by the towing and storage firm, the center may charge a fee, not to exceed ten dollars (\$10.00) per vehicle verification.

(e)(1) Notice of the sale shall be sent at least fifteen (15) days before the date of the sale by certified mail, no return receipt requested, to the registered owner and lienholder, if any.

(2) If the data records of the Office of Motor Vehicle or the office of motor vehicles for the state where the vehicle is registered do not contain any information as to the last known registered owner or owners or lienholders, the notice required under subdivision (e)(1) of this section is not required.

(3) Nothing in this subsection removes the requirement of notice of sale by publication under subsection (f) of this section.

(f) In addition to the notice by mail, notice of the sale shall be published in a newspaper of general circulation in the county at least one (1) time at least ten (10) days prior to the sale.

**History.** Acts 2001, No. 1830, § 6; 2005, No. 1878, § 8; 2005, No. 2189, § 1; 2005, No. 2211, § 4; 2007, No. 506, § 3; 2007, No. 1053, § 12.

**Publisher's Notes.** Former § 27-50-1209, concerning foreclosure of liens, was repealed by Acts 1997, No. 841, § 8. The

section was derived from Acts 1993, No. 1000, § 8.

**Amendments.** The 2007 amendment by No. 506 reenacted (b) without change.

The 2007 amendment by No. 1053 re-designated former (a) as present (a)(1); substituted "forty-five (45) days of the

posting or publication of notice to owners and lienholders” for “the time provided in this subchapter” in (a)(1); added (a)(2) and (a)(3); in (b)(1), substituted “time frame” for “forty-five (45) days” and substituted “section” for “subchapter”; added “or forty-five . . . whichever is later” in (b)(2); in (c)(2), substituted “The time frame” for “Forty-five (45) days have expired” and “subsection (a)” for “subdivision (b)(1),”

and inserted “has expired”; substituted “following the passage of the time frame for an owner or lienholder to reclaim a vehicle under subsection (a)” for “from the passage of the forty-five (45) days required under subdivision (b)(1)” in (c)(2)(B)(ii)(b); redesignated former (e) as present (e)(1); added (e)(2) and (e)(3); and made related changes.

### CASE NOTES

#### Notice of Sale.

Trial court erred in dismissing a creditor’s action against a debtor to recover the balance on an installment contract for the purchase of an automobile where it was a towing company’s duty, as the holder of a

first-priority possessory lien on the wrecked automobile, to notify the debtor of its intent to foreclose on the lien by selling the automobile. The towing company did so. *Primus Fin. Servs. v. Seitz*, 102 Ark. App. 146, 283 S.W.3d 235 (2008).

#### 27-50-1210. Nonjudicial public sale.

(a) After complying with the requirements of foreclosure of liens provided by this subchapter, ownership of the vehicle and its contents shall thereupon vest in the purchaser free of all liens of any nature. Should the nonjudicial public sale produce more funds than the sum of all charges, including the costs of the sale and including a reasonable charge for processing the paperwork, the excess shall be paid as follows:

(1)(A) If the vehicle was removed to an impound lot at the request of a law enforcement agency as authorized by this subchapter, the excess shall be maintained for a period of three (3) years by the entity that operates the impound lot.

(B) If the excess is not claimed during this period by the person legally entitled thereto, the moneys shall be paid to the entity operating the impound lot; or

(2)(A) If the vehicle was removed to a private impound lot pursuant to § 27-50-1101, the excess shall be paid to the county clerk to the account of the person legally entitled thereto.

(B) The Unclaimed Property Act, § 18-28-201 et seq., shall apply to any unclaimed funds or excess moneys that have been paid to the county clerk.

(b) Should the sale produce the same or less than the sum of all charges:

(1) At the election of the possessory lienholder, the sale of the vehicle may be cancelled and ownership of the vehicle and its contents shall thereupon vest in the possessory lienholder as purchaser free of all liens of any nature; and

(2) The possessory lienholder shall have a valid claim against the owner for the full amount of the charges, including the costs of the sale and including a reasonable charge for processing the paperwork, less the sale price of the vehicle and its contents.

(c)(1) Upon presentation of documentation to the Office of Motor Vehicle of the Department of Finance and Administration to the effect that the sale procedure provided in this subsection has been complied with protecting the rights of the owner or lienholder, the purchaser of the vehicle shall be entitled to receive a new title to the vehicle upon meeting other applicable administrative requirements of title and registration laws.

(2) The towing and storage firm shall execute an affidavit stating that the vehicle has been towed and stored as an unattended or abandoned vehicle and that notice has been given as required in this subchapter to the registered owners and all lienholders of record.

(3) The affidavit shall describe the vehicle by make, year, model, and vehicle identification number.

**History.** Acts 1993, No. 1000, § 9; 1997, No. 841, § 4; 2001, No. 1820, § 1; 2001, No. 1830, § 7; 2005, No. 1878, § 9; 2005, No. 2211, § 5; 2007, No. 1053, § 13.

**A.C.R.C. Notes.** The former Uniform Disposition of Unclaimed Property Act, referred to in this section, was repealed, with the exception of what will be current § 18-28-230, and replaced by the enactment of the Unclaimed Property Act by Acts 1999, No. 850.

**Publisher's Notes.** Former § 27-50-1210, concerning auction sale, was repealed by Acts 1993, No. 1000, § 14 and was impliedly reenacted by Acts 1993, No. 1000, § 9. The former section was derived from Acts 1989, No. 899, § 8.

**Amendments.** The 2007 amendment substituted "At the election of the possessory lienholder, the sale of the vehicle may be cancelled and ownership" for "Ownership" in (b)(1).

## 27-50-1211. Disposition of funds.

(a) All fees, fines, and charges collected by the Arkansas Towing and Recovery Board under the provisions of this subchapter shall be paid to the secretary-treasurer, who shall be the custodian of all funds and shall deposit same in a bank or banks to be designated by the board.

(b) The secretary-treasurer shall execute a bond in the amount determined by the State Risk Manager pursuant to the blanket bond program as authorized in § 21-2-601 et seq. [repealed].

(c) The secretary-treasurer shall pay funds of the board only on vouchers signed by himself or herself and countersigned by the chair. The total expenses for all purposes and obligations of the board shall not exceed the total fees, charges, and other funds paid to the board under the provisions of this subchapter.

(d) The secretary-treasurer shall make semiannual financial reports in detail to the board not later than January 31 and July 31 of each year, which financial reports will be kept on permanent file by the board.

**History.** Acts 1993, No. 1000, § 11; 2005, No. 1878, § 10.

**A.C.R.C. Notes.** The operation of subsection (b) of this section was suspended by adoption of a self-insured fidelity bond program for public officers, officials and

employees, effective July 20, 1987, pursuant to § 21-2-701 et seq. The subsection may again become effective upon cessation of coverage under that program. See § 21-2-703.



**27-50-1212. Criminal penalties.**

(a) It shall be unlawful for a person to:

- (1) Operate a tow vehicle in violation of this subchapter;
- (2) Operate a tow vehicle without obtaining a tow vehicle safety permit as required by the rules of the Arkansas Towing and Recovery Board;
- (3) Operate a business engaging in nonconsent towing of vehicles without first obtaining the proper tow business license as required by the rules of the board;
- (4) Give false or forged evidence to the board or to any member or an employee thereof for the purpose of obtaining a license or a tow vehicle safety permit;
- (5) Use or attempt to use an expired, suspended, or revoked license or tow vehicle safety permit; or

(6) Violate or aid or abet any violation of this subchapter.

(b) The Department of Arkansas State Police, the Arkansas Highway Police Division of the Arkansas State Highway and Transportation Department, and county and municipal authorities may enforce § 27-50-1101 et seq. and § 27-50-1201 et seq.

(c) A person who pleads guilty or nolo contendere to or is found guilty of any violation under this section shall be guilty of a misdemeanor and shall be sentenced to pay a fine of not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500) or to be imprisoned for a period not exceeding ninety (90) days, or both.

(d) The fines imposed and collected under this section shall be remitted as follows:

(1) Fifty percent (50%) to the Administration of Justice Fund Section of the Office of Administrative Services of the Department of Finance and Administration by the tenth day of each month on a form provided by that office for deposit into the Arkansas Towing and Recovery Board treasury fund; and

(2) Fifty percent (50%) to the law enforcement agency issuing the violation.

(e) Each day of an unlawful practice proscribed by this section shall constitute a distinct and separate offense.

**History.** Acts 1997, No. 392, § 5; 2005, No. 2211, § 6; 2007, No. 861, § 9; 2009, No. 644, § 1.

added (b); redesignated former (b) as present (c); added (d); and redesignated former (c) as present (e).

**Amendments.** The 2007 amendment

The 2009 amendment rewrote (d)(1).

**27-50-1213. Limitation on removing from the state.**

(a) A towing or wrecker service licensed in a state other than Arkansas shall only remove a vehicle that was involved in a motor vehicle accident in the State of Arkansas from the site of the accident to another state if the state in which the towing or wrecker service is licensed extends the same privilege to a towing or wrecker service that is licensed in Arkansas and operating in the other state.

(b) For the purpose of determining whether a state permits Arkansas-licensed wreckers and Arkansas-licensed towing vehicles to remove a vehicle that was involved in an accident in that state, any limitation imposed by a county, parish, city, or other political subdivision of that state is deemed an action of that state.

(c)(1) This section applies only to the initial removal of a vehicle from the site of an accident to a point of storage or repair.

(2) This section does not apply to the secondary towing of a vehicle after an investigation of a motor vehicle accident is completed.

(d) When towing a vehicle in this state, a towing or wrecker service licensed in a state other than Arkansas must comply with the provisions of this subchapter and § 27-35-112.

**History.** Acts 2005, No. 1807, § 1; “licensed in a state other than Arkansas” 2007, No. 1053, § 14. and substituted “motor vehicle accident”

**Amendments.** The 2007 amendment for “collision” and “accident” for “collision”; and added (b) through (d). added the (a) designation; in (a), inserted

#### **27-50-1214. Rules of order or procedure.**

(a) The Arkansas Towing and Recovery Board shall prescribe its rules of order or procedure in hearings or other proceedings before it under this subchapter.

(b) However, rules of order or procedure shall not be in conflict or contrary to the provisions of this subchapter or the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

**History.** Acts 2005, No. 1878, § 1.

#### **27-50-1215. Summons, citation, and subpoena.**

(a) It shall be the duty of the sheriffs and constables of the counties of this state and of any employee of the Arkansas Towing and Recovery Board, when so directed by the board, to execute any summons, citation, or subpoena that the board may cause to be issued and to return the summons, citation, or subpoena to the board.

(b)(1) The sheriffs and constables serving and returning any summons, citation, or subpoena shall be paid the same fees as provided for those services in the circuit court.

(2) Any person, or a duly designated employee of the person, who appears before the board in response to a summons, citation, or subpoena shall be paid the same witness fee and mileage allowance as witnesses in the circuit court.

(c)(1) In case of failure or refusal on the part of any person to comply with any summons, citation, or subpoena issued and served as authorized, or in the case of the refusal of any person to testify or answer to any matter regarding that which he or she may be lawfully interrogated or the refusal of any person to produce his or her record books and accounts relating to any matter regarding that which he or she may be

lawfully interrogated, the circuit court of any county of the State of Arkansas on application of the board may:

- (A) Issue an attachment for the person; and
- (B) Compel the person to:

(i) Comply with the summons, citation, or subpoena;

(ii) Appear before the board or its designated employee;

(iii) Produce the documents specified in any subpoena duces tecum; and

(iv) Give his or her testimony upon such matters as he or she may be lawfully required.

(2) Any circuit court shall have the power to punish a person for contempt as in the case of disobedience of like process issued from or by any circuit court or by refusal to testify in the circuit court in response to the process, and the person shall be taxed with the costs of the proceedings.

**History.** Acts 2005, No. 1878, § 1.

CHAPTER 51

OPERATION OF VEHICLES — RULES OF THE ROAD

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. SPEED LIMITS.
3. DRIVING, OVERTAKING, AND PASSING.
4. TURNING, STOPPING, AND SIGNALING.
5. INTERSECTIONS.
6. STOPS AND YIELDING.
7. RAILROAD GRADE CROSSINGS.
8. STREETCARS.
9. EMERGENCY VEHICLES.
10. SCHOOL BUSES.
11. CHURCH BUSES.
12. PEDESTRIANS.
13. STOPPING, STANDING, OR PARKING.
14. MISCELLANEOUS RULES.
15. PAUL’S LAW: TO PROHIBIT DRIVERS OF MOTOR VEHICLES FROM USING HANDHELD WIRELESS TELEPHONES TO ENGAGE IN TEXT MESSAGING.
16. FEWER DISTRACTIONS MEAN SAFER DRIVING ACT.

RESEARCH REFERENCES

<b>Am. Jur.</b> 7A Am. Jur. 2d, Auto., § 204 et seq.	60A C.J.S., Motor Veh., § 266 et seq., § 274 et seq.
<b>C.J.S.</b> 60 C.J.S., Motor Veh., § 27 et seq.	61 C.J.S., Motor Veh., § 511.9 et seq.



**SUBCHAPTER 1 — GENERAL PROVISIONS****SECTION.**

27-51-101. Definitions.

27-51-102. Penalties generally — Disposition of fines.

27-51-103. Right to recover damages unaffected.

**SECTION.**

27-51-104. Careless and prohibited driving.

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**Effective Dates.** Acts 1911, No. 134, § 20: effective on passage.

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**27-51-101. Definitions.**

As used in this chapter, unless the context otherwise requires:

(1) "Local authorities" means all officers of counties, cities, villages, incorporated towns, or townships; and

(2) "Public highways" means any highway, county road, state road, public street, avenue, alley, park, parkway, driveway, or any other public road or public place in any county, city, village, or incorporated towns.

**History.** Acts 1911, No. 134, § 20, p. 94; C. & M. Dig., § 7436; Pope's Dig., § 6648; A.S.A. 1947, § 75-664.

**CASE NOTES****Military Reservations.**

Highway in military reservation is not a public highway of the state. *Camden v. Harris*, 109 F. Supp. 311 (W.D. Ark. 1953).

**27-51-102. Penalties generally — Disposition of fines.**

(a) Any person violating the provisions of this act shall, except as otherwise provided in this act, upon conviction be fined as provided by the provisions of this act.

(b)(1) Any offender who shall have been found guilty of any violation of any section of this act and fined and who shall within six (6) months thereafter be convicted of a second violation of such section may be fined in a sum not exceeding double the penalty provided for in this act for a first violation. In addition thereto, he or she may have his or her certificate or license issued by the Director of the Department of Finance and Administration revoked for a period not exceeding sixty (60) days.

(2) For a third or subsequent violation of a section within six (6) months after the date of such violation, the certificate or license may in

addition to the fine provided for the second offense be revoked for a period not exceeding six (6) months.

(c) Any person whose license shall have been revoked for a violation of any of the provisions of this act and who shall drive or operate a motor vehicle within the State of Arkansas during the period for which his or her license shall have been revoked, or any person who having once been convicted of a failure to comply with the provisions requiring the registration by chauffeurs shall fail or refuse to comply with these provisions shall be deemed guilty of a misdemeanor and upon conviction may be fined in a sum not to exceed two hundred dollars (\$200) or imprisoned in the county jail for a period not exceeding thirty (30) days, or both, at the discretion of the court.

(d)(1) All fines imposed for the violation of any of the provisions of this act shall be paid into the general free school fund in each county where the offense is committed.

(2) All officers whose duty is to collect fines imposed for violations of this act shall do so, and all moneys received by them shall be turned in to the county treasury of the county where the fines are imposed, to be credited to the free school fund.

**History.** Acts 1911, No. 134, § 19, p. 94; 134, codified as §§ 27-14-702, 27-14-2208, C. & M. Dig., § 7435; Pope's Dig., § 6647; 27-14-2209, 27-50-309, 27-51-101 — 27-51-103, 27-51-1406, and 27-51-1407. A.S.A. 1947, § 75-663.

**Meaning of "this act".** Acts 1911, No.

### **27-51-103. Right to recover damages unaffected.**

(a) Nothing in this act shall be construed to curtail or abridge the right of any person to prosecute a civil action for damages by reason of injuries to persons or property resulting from the negligent use of the highways by the driver or operator of a motor vehicle or its owner or his or her employee or agent.

(b) In any action brought to recover any damages for injury either to person or property caused by running any motor vehicle at a greater rate of speed than designated in Acts 1911, No. 134, § 10 [repealed], the plaintiff shall be deemed to have made a prima facie case by showing the fact of the injury and that the person driving the motor vehicle was at the time of the injury running it at a rate of speed in excess of that mentioned in Acts 1911, No. 134, § 10 [repealed].

**History.** Acts 1911, No. 134, § 18, p. 94; **Meaning of "this act".** See note to C. & M. Dig., § 7434; Pope's Dig., § 6646; § 27-51-102. A.S.A. 1947, § 75-662.

### **27-51-104. Careless and prohibited driving.**

(a) It shall be unlawful for any person to drive or operate any vehicle in such a careless manner as to evidence a failure to keep a proper lookout for other traffic, vehicular or otherwise, or in such a manner as

to evidence a failure to maintain proper control on the public thoroughfares or private property in the State of Arkansas.

(b) It shall be unlawful for any person to operate or drive any vehicle on the public thoroughfares or private property in the State of Arkansas in violation of the following prohibited acts:

- (1) Improper or unsafe lane changes on public roadways;
- (2) Driving onto or across private property to avoid intersections, stop signs, traffic control devices, or traffic lights;
- (3) Driving in such a manner or at such a speed so as to cause a skidding, spinning, or sliding of tires or a sliding of the vehicle;
- (4) Driving too close to or colliding with parked or stopped vehicles, fixtures, persons, or objects adjacent to the public thoroughfares;
- (5) Driving a vehicle which has any part thereof or any object extended in such fashion as to endanger persons or property;
- (6) To operate any vehicle in such a manner which would cause a failure to maintain control;
- (7) To operate or drive a vehicle wherein or whereon passengers are located in such a manner as to be dangerous to the welfare of such passengers; or
- (8) To operate a vehicle in any manner when the driver is inattentive and such inattention is not reasonable and prudent in maintaining vehicular control.

(c) A person who violates this section shall be subject to a fine not to exceed one hundred dollars (\$100).

**History.** Acts 1995, No. 807, § 1.

## CASE NOTES

### ANALYSIS

**Admissibility in Civil Action.**  
**Evidence.**  
**Weaving.**

#### **Admissibility in Civil Action.**

Where a driver sued another driver for negligence regarding a car accident, it was not an abuse of discretion to exclude evidence related to the other driver's traffic citation and resulting negotiated plea, because the other driver did not appear in court, and accordingly, did not enter a plea in open court. *Nixon v. Chapman*, 103 Ark. App. 222, 288 S.W.3d 266 (2008).

#### **Evidence.**

Where an old bridge without a weight limit sign collapsed under the weight of driver's truck, no reasonable officer at the scene would have believed that probable cause existed to arrest the driver for careless driving; no evidence suggested that

the truck had collided with the bridge so as to cause its collapse or that the driver had been inattentive. *Robinson v. White County*, 452 F.3d 706 (8th Cir. 2006), *aff'd in part, vac'd in part*, 459 F.3d 900 (8th Cir. 2006).

Denial of defendant's motion to suppress before she pled guilty to possession of marijuana with intent to deliver was inappropriate because, based on an officer's testimony that there were no other vehicles around, the circumstances within the officer's knowledge were insufficient to permit a belief that defendant failed to keep a proper lookout for other traffic by backing down the road under this section. *Stokes v. State*, 375 Ark. 394, 291 S.W.3d 155 (2009).

#### **Weaving.**

Weaving within one's own lane does not constitute failing to maintain control. *Barrientos v. State*, 72 Ark. App. 376, 39 S.W.3d 17 (2001).



## SUBCHAPTER 2 — SPEED LIMITS

## SECTION.

- 27-51-201. Limitations generally.
- 27-51-202. Restrictions not applicable to emergency vehicles.
- 27-51-203. Authority to establish limits.
- 27-51-204. Maximum and minimum speed limits — Exceptions.
- 27-51-205. Right of local authorities to enforce limits.
- 27-51-206. Local authorities may alter prima facie speed limits.
- 27-51-207. Assistance to local authorities in determining limits.
- 27-51-208. Minimum speed regulation.
- 27-51-209. Driving over bridges or other elevated structures.

## SECTION.

- 27-51-210. Towing of manufactured homes and mobile homes.
- 27-51-211. Use of nonpneumatic tires.
- 27-51-212. Speed limit near schools — Exceptions.
- 27-51-213. Erection and maintenance of required signs in school zones.
- 27-51-214. Penalties for speeding in school zone.
- 27-51-215. Arkansas Primary Highway Network study.
- 27-51-216. Speed limits and traffic-control devices on county roads — Penalty.

**Cross References.** Credibility as witness not affected, § 27-50-805.

Width, length, height and gross load, § 27-35-201 et seq.

**Preambles.** Acts 1971, No. 61 contained a preamble which read: "Whereas, the problem of road-user safety is paramount throughout the Nation among the problems relating to transportation of persons and goods by all media; and

"Whereas, the proper regulation and control of traffic upon and in use of the arterial highways, roads, and streets of the Nation is basic in any realistic approach to road-user safety; and

"Whereas, the determination of reasonable and prudent speeds can only be made through sound, objective engineering analyses of all the pertinent factors bearing upon the use of each section of State Highway; and

"Whereas, these objective engineering analyses are the province of highly trained professional and technological personnel; and

"Whereas, the regulation of both maximum and minimum speeds throughout the State Highway System is necessary first, for the safety, convenience, and comfort of the road-user and, second, for the conservation and protection of the public investment in that System; and

"Whereas, to achieve these ends this regulation must be determined by the highly competent trained personnel of the State Highway Department to achieve op-

timum results in the desired safety, operational, and conservation goals as the changing design and use of highway facilities and motor vehicles become increasingly more complex and technical;

"Now, therefore...."

**Effective Dates.** Acts 1937, No. 300, § 165: Mar. 23, 1937. Emergency clause provided: "It is hereby ascertained and determined by the General Assembly that the proper regulation of traffic on the highways is a necessary function of the State Government, and that the loss of life and property under the present laws creates an emergency. Therefore, this act being necessary for the immediate preservation of the public peace, health and safety, shall go into effect immediately upon its passage and approval."

Acts 1939, No. 179, § 2: effective 30 days after passage and approval. Approved Mar. 9, 1939. Emergency clause provided: "It is found that driving at an excessive rate of speed is the cause of a large percentage of the fatalities on the highways of this state and that such excess of speed creates a hazard upon our highways and that heavily loaded trucks when driven at a high rate of speed excessively damage the highways of this state. Therefore an emergency is found to exist and this act being necessary for the immediate preservation of the public peace, health and safety, shall take effect and be in full force from and after thirty days from its passage and approval."

Acts 1971, No. 61, § 7: Feb. 8, 1971. Emergency clause provided: "The General Assembly finds that the State of Arkansas is in immediate need of proper regulation and control of traffic upon and in use of the arterial highways, roads and streets of the State in any basic approach to road-

user safety. Accordingly an emergency is declared to exist, and this Act being necessary for the preservation of the public health, peace and safety shall be effective from and after its passage and approval."

Acts 1977, No. 229, § 7: July 1, 1977.

### RESEARCH REFERENCES

**ALR.** Possession or operation of device for detecting or avoiding traffic radar as criminal offense. 17 A.L.R.4th 1334.

**Am. Jur.** 7A Am. Jur. 2d, Auto., § 218 et seq.

**C.J.S.** 60 C.J.S., Motor Veh., § 29(1) et seq.

60A C.J.S., Motor Veh., § 290(1) et seq.

**U. Ark. Little Rock L.J.** Survey of Arkansas Law, Torts, 1 U. Ark. Little Rock L.J. 264.

## 27-51-201. Limitations generally.

(a)(1) No person shall drive a vehicle on a highway at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing.

(2) In every event, speed shall be so controlled as may be necessary to avoid colliding with any person, vehicle, or other conveyance on or entering the highway in compliance with legal requirements and the duty of all persons to use due care.

(b)(1) The maximum speed limits set forth in subsection (c) of this section shall not apply to controlled-access highways.

(2)(A) Upon an engineering and traffic investigation, the State Highway Commission shall determine the maximum permissible speeds on controlled-access highways which shall be effective when appropriate signs giving notice are erected along the highway.

(B) The commission shall fix the maximum permissible speed of trucks with a capacity of one-and-one-half tons or more at ten miles per hour (10 m.p.h.) below the maximum permissible speed for automobiles.

(c) On all facilities other than controlled-access highways, except when a special hazard exists that requires lower speed for compliance with subsection (a) of this section, the limits specified in this section or established as authorized shall be maximum lawful speeds, and no person shall drive a vehicle on a highway at a speed in excess of the following limits:

(1) Thirty miles per hour (30 m.p.h.) in any urban district;

(2) Fifty miles per hour (50 m.p.h.) for trucks of one-and-one-half-ton capacity or more in other locations;

(3) Sixty miles per hour (60 m.p.h.) for other vehicles in other locations; and

(4) No vehicle which is over width, over length, or over height or the gross load of which is in excess of sixty-four thousand pounds (64,000

lbs), excluding the front axle, even if operated under a special permit, shall be operated in excess of thirty miles per hour (30 m.p.h.).

(d) Consistent with the requirements of subsection (a) of this section, the driver of every vehicle shall drive at an appropriate reduced speed when approaching and crossing an intersection or railway grade crossing, when approaching and going around a curve, when approaching the crest of a hill, when traveling upon any narrow or winding roadway, and when special hazard exists with respect to pedestrians or other traffic or by reason of weather or highway conditions.

(e) In every charge of violation of this section, the complaint and the summons or notice to appear shall specify the speed at which the defendant is alleged to have driven and the prima facie speed applicable within the district or location.

(f) No person shall operate any motor-driven cycle at any time mentioned in § 27-36-204(a) at a speed greater than thirty-five miles per hour (35 m.p.h.) unless such motor-driven cycle is equipped with a headlamp or headlamps which are adequate to reveal a person or vehicle at a distance of three hundred feet (300') ahead.

(g) The provisions of this section shall not be construed to relieve the plaintiff in any civil action from the burden of proving negligence upon the part of the defendant as the proximate cause of the accident.

**History.** Acts 1937, No. 300, § 51; Pope's Dig., § 6709; Acts 1939, No. 179, § 1; 1959, No. 307, § 33; 1963, No. 557, §§ 1, 2; A.S.A. 1947, § 75-601.

**Cross References.** Penalty for violation of 1959 amendatory act, § 27-50-305.

## CASE NOTES

### ANALYSIS

Applicability.  
Duties of Drivers.  
Instructions.  
Jury Questions.  
Manslaughter.  
"National" Speed Limit.  
Negligence.  
—Contributory.  
—Evidence.  
Ordinary Care.  
Probable Cause.  
Proximate Cause.  
Reasonable and Prudent Driving.  
Truck Tractors.  
Witnesses.

### Applicability.

In the absence of a showing that a special hazard existed on the highway or that there were signs specifying a particular speed, the statutory speed mentioned in this section would control. *Elmore v.*

*Dillard*, 227 Ark. 260, 298 S.W.2d 338 (1957).

### Duties of Drivers.

It was held to be the duty of the driver of an automobile on the streets of a city to keep his vehicle under such control as to be able to check the speed or stop it absolutely if necessary to avoid injury to others where danger could reasonably be expected or was apparent. *Madding v. State*, 118 Ark. 506, 177 S.W. 410 (1915) (decision under prior law).

It was held to be the duty of an automobile driver when going around a corner or approaching a curve, where his view was obstructed, to reduce his speed and take such care as the situation demanded. *Bona v. S.R. Thomas Auto Co.*, 137 Ark. 217, 208 S.W. 306 (1919) (decision under prior law).

If rise is high enough to block driver's view of the road ahead, it is his statutory duty to reduce his speed in approaching the crest of the hill. *Greyhound Lines v.*



Harmon, 239 Ark. 1031, 396 S.W.2d 291 (1965).

### Instructions.

Instruction on former speed statute in negligence case was proper as against contention that instruction was on wrong statute where two statutes were substantially the same. *Graves v. Jewell Tea Co.*, 180 Ark. 980, 23 S.W.2d 972 (1930) (decision under prior law).

An instruction, in an action for damages received in a collision, that, if the defendant was operating his automobile in a residential district at a speed greater than 20 miles per hour and such speed was the proximate cause of the collision and damages, the jury should return a verdict for the plaintiff was erroneous, as it made the violation of the traffic law negligence *per se* instead of leaving to the jury to consider the violation with the other facts and circumstances in determining whether the defendant was negligent. *Herring v. Bollinger*, 181 Ark. 925, 29 S.W.2d 676 (1930) (decision under prior law).

An instruction authorizing recovery by a passenger if a motorist drove at excessive speed and recklessly failed to keep his automobile under control and failed to exercise ordinary care for a passenger's safety was not objectionable as abstract, misleading, or erroneous. *Hammond v. Hamby*, 191 Ark. 780, 87 S.W.2d 1000 (1935) (decision under prior law).

Instruction that plaintiff would be guilty of negligence if he could not bring his car to a standstill within the distance in which he could plainly see parked cars was erroneous, since it was for jury to determine whether speed, under conditions existing, was reasonable and prudent. *Kirby v. Swift & Co.*, 199 Ark. 442, 134 S.W.2d 865 (1939).

Where defendant was charged with involuntary manslaughter for reckless driving, the court properly refused an instruction of the defendant to the effect that if defendant was exercising due care and was not driving over posted highway speed limit the jury should acquit the defendant, as posted speed limit only fixed the maximum speed allowed and did not give the defendant the right to drive that fast under any and all conditions, and specifically under the conditions indicated by the evidence in the particular case. *Campbell v. State*, 215 Ark. 785, 223 S.W.2d 505 (1949).

Where a motorcycle ridden by a minor and a car driven by the defendant collided, it was not reversible error to refuse to instruct the jury that a minor should not be held to the same standard of care as an adult and that a higher degree of care is owed to minors, as this section and §§ 27-16-204, 27-16-206, 27-16-207, 27-51-208 — 27-51-211, and 27-51-308, pertaining to safety on the highways, disclose no distinction between the degree of care to be exercised by a minor and an adult. *Harrelson v. Whitehead*, 236 Ark. 325, 365 S.W.2d 868 (1963).

In a wrongful death action brought by the personal representative of the guest passenger of a deceased automobile driver, an instruction that violation of this section by the driver, if established by the evidence, could be considered by the jury in determining whether or not the driver was guilty of willful or wanton misconduct in the operation of the vehicle was properly refused, as it would have led the jury to the erroneous belief that such violation was evidence of willful and wanton misconduct. *Shearer v. Newsom*, 250 Ark. 33, 463 S.W.2d 642 (1971).

Where collision between vehicles occurred when one vehicle made left turn without signal and was struck by car coming in other direction and suit was brought by driver of the latter car, it was not error for the court to give, at the plaintiff's request, an instruction that explains the duty of a driver to keep a lookout, to keep his vehicle under control, and to drive at a speed no greater than is reasonable in the circumstances. *Courson v. Chandler*, 258 Ark. 904, 529 S.W.2d 864 (1975).

A trial court properly refuses to instruct jury under this section concerning speed limit on highway where accident occurs when no proof is given as to the speed limit. *Miller v. Tipton*, 272 Ark. 1, 611 S.W.2d 764 (1981).

Where there was testimony concerning the existence of a curve, the existence of an intersection, at least some suggestion of the proximity of the curve to the intersection, the speed at which the driver was traveling, and the effect of her failure to slow in the curve, the proffered instruction regarding negligence was a correct statement of the law, was relevant in the circumstances of the case, and it should

have been given. *Parker v. Holder*, 315 Ark. 307, 867 S.W.2d 436 (1993).

### **Jury Questions.**

Whether or not driver of an automobile was driving at a reckless or careless speed is a question for the jury, under proper instructions. *Elmore v. Dillard*, 227 Ark. 260, 298 S.W.2d 338 (1957).

It is up to the jury to decide whether a reasonably prudent individual would have checked his speed when approaching a person near the edge of the main traveled portion of the highway. *Thomas v. Newman*, 262 Ark. 42, 553 S.W.2d 459 (1977).

### **Manslaughter.**

One driving an automobile on highway while drunk at a greater rate of speed than allowed by former statute could be found guilty of involuntary manslaughter if he caused another's death. *White v. State*, 164 Ark. 517, 262 S.W. 338 (1924); *Fields v. Freeman*, 177 Ark. 807, 8 S.W.2d 436 (1928) (decisions under prior law).

### **"National" Speed Limit.**

Whereas the 55 mile per hour limit was adopted by the State Highway Commission which determined that the suggested national standard was in conformity with its own engineering and traffic investigations, the speed limit was not an unconstitutional infringement by the United States Congress. *Neikirk v. State*, 260 Ark. 526, 542 S.W.2d 282 (1976), cert. denied, *Neikirk v. Arkansas*, 430 U.S. 909, 97 S. Ct. 1183, 51 L. Ed. 2d 586 (1977).

### **Negligence.**

Where a driver who had been driving for approximately 10 hours was unable to stop his truck and thereby avoid striking another vehicle because of fog and wet, slick pavement, he was driving at a rate of speed greater than was prudent and reasonable under existing conditions and therefore was guilty of negligence. *Sunday v. Burk*, 172 F. Supp. 722 (W.D. Ark. 1959).

### **—Contributory.**

Contributory negligence of parties held equal, and so neither party could recover against the other. *Easley v. Inglis*, 233 Ark. 589, 346 S.W.2d 206 (1961).

An individual who operated his car at such speed that he was unable to stop in time to avoid another person who was emerging from a private driveway in full view violated this section and was guilty

of contributory negligence. *Kelly v. United States*, 230 F. Supp. 118 (W.D. Ark. 1964).

### **—Evidence.**

The provisions of former statute prescribing speed limits were to be considered by a jury in determining whether one or both of two colliding cars were being negligently driven at the time a person was injured. *Carter v. Brown*, 136 Ark. 23, 206 S.W. 71 (1918) (decision under prior law).

The violation of state traffic statutes was held to be merely evidentiary of negligence and did not constitute negligence per se. *Fields v. Freeman*, 177 Ark. 807, 8 S.W.2d 436 (1928); *Union Sec. Co. v. Taylor*, 185 Ark. 737, 48 S.W.2d 1100 (1932) (preceding decisions under prior law).

A violation of this section, while not conclusive of the issue, may be evidence of negligence on the part of the violator. *Kisor v. Tulsa Rendering Co.*, 113 F. Supp. 10 (W.D. Ark. 1953).

### **Ordinary Care.**

Obedying the speed limit is not all that is required of drivers in the exercise of ordinary care. *Thomas v. Newman*, 262 Ark. 42, 553 S.W.2d 459 (1977).

### **Probable Cause.**

Motion to suppress evidence was properly denied in a drug case where the evidence showed that a search based on a pretextual stop was valid; the officer had probable cause for the stop since the vehicle was speeding, consent to search was given by the registered owner, and the consent was not limited to exclude containers found inside the vehicle. *Flores v. State*, 87 Ark. App. 327, 194 S.W.3d 207 (2004).

### **Proximate Cause.**

Where driver of the following car ascertained that he could not pass leading car because of oncoming traffic and pulled in so closely behind leading car that he was unable to decrease his speed or stop when leading car decreased its speed without signal because of suddenly seeing a truck parked partly on highway and ran into the rear of the leading car, his action in driving too closely behind the leading car was an act of negligence which was the proximate cause of the accident. *Waycaster v. Sorenson*, 124 F. Supp. 892 (W.D. Ark. 1954).



Where defendant was driving in excess of the speed limit and plaintiff driving in front approached intersection at which he intended to turn left and after giving a proper signal yielded the right-of-way to approaching vehicles before turning left, but the defendant in the following vehicle not being able to stop swerved into the other lane of traffic and struck plaintiff after he had almost completed his left turn, plaintiff was not guilty of contributory negligence; rather the negligence of the defendant was the proximate cause of the collision. *Dearing v. Ferrell*, 165 F. Supp. 508 (W.D. Ark. 1958).

#### **Reasonable and Prudent Driving.**

The statement that the criterion of a prudent driver is not his ability to skirt the outer edges of the law succinctly outlines one of the tests to be used in determining whether or not the driver is driving in a reasonable and prudent manner

as required by this section. *Reppeto v. Raymond*, 172 F. Supp. 786 (W.D. Ark. 1959).

#### **Truck Tractors.**

A truck tractor being operated without a trailer is still a truck, and not a passenger vehicle; hence its operation is governed by the law relating to speed of trucks. *Rapert v. State*, 215 Ark. 768, 223 S.W.2d 192 (1949).

#### **Witnesses.**

It was held that nonexperts could testify that a vehicle was running unusually fast. *Bowen v. State*, 100 Ark. 232, 140 S.W. 28 (1911) (decision under prior law).

**Cited:** *Billingsley v. Westrac Co.*, 246 F. Supp. 356 (W.D. Ark. 1965); *Billingsley v. Westrac Co.*, 365 F.2d 619 (8th Cir. 1966); *Dugal v. Commercial Std. Ins. Co.*, 456 F. Supp. 290 (W.D. Ark. 1978); *Rodriguez v. State*, 299 Ark. 421, 773 S.W.2d 821 (1989).

### **27-51-202. Restrictions not applicable to emergency vehicles.**

(a) The prima facie speed limitations set forth in this subchapter shall not apply to authorized emergency vehicles when responding to emergency calls when the driver thereof is operating the vehicle's emergency lights and is also operating an audible signal by bell, siren, or exhaust whistle if other vehicles are present.

(b) This section shall not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons using the street, nor shall it protect the driver of any emergency vehicle from the consequence of a reckless disregard of the safety of others.

(c) For purposes of this section, "emergency calls" means legitimate emergency situations which call for the operation of an emergency vehicle, including a police vehicle.

**History.** Acts 1937, No. 300, § 55; 606; Acts 2001, No. 332, § 1; 2001, No. Pope's Dig., § 6713; A.S.A. 1947, § 75-1415, § 1.

#### **RESEARCH REFERENCES**

**Ark. L. Rev. Torts — Duty of Emergency Vehicles**, 21 Ark. L. Rev. 272 (1967).  
*City of Caddo Valley v. George: Stop or I'll Sue! Police Chases and the Price Cities May Pay*, 55 Ark. L. Rev. 425 (2002).



## CASE NOTES

## ANALYSIS

Negligence.  
Standard of Care.

**Negligence.**

The officers were negligent in continuing the high-speed pursuit once they knew of conditions which could create a danger to innocent bystanders; it was their duty, once they knew of the roadblock, to exer-

cise ordinary care for the safety of others using the highway. *City of Caddo Valley v. George*, 340 Ark. 203, 9 S.W.3d 481 (2000).

**Standard of Care.**

The driver of an emergency vehicle is held to a standard of ordinary care. *City of Little Rock v. Weber*, 298 Ark. 382, 767 S.W.2d 529 (1989).

**Cited:** *Freeman v. Reeves*, 241 Ark. 867, 410 S.W.2d 740 (1967).

**27-51-203. Authority to establish limits.**

(a) The determination and establishment of safe maximum and minimum travel speeds for all motor vehicles using the facilities of the state highway system shall be vested in the State Highway Commission, whose power, responsibility, and duty it shall be to implement and maintain this control with all reasonable care and prudence.

(b) To this end, this section and §§ 27-51-204 — 27-51-207 shall be made supplemental to § 27-65-107.

**History.** Acts 1971, No. 61, § 1; A.S.A. 1947, § 75-601.1.

**27-51-204. Maximum and minimum speed limits — Exceptions.**

(a)(1) The State Highway Commission shall determine, based upon studies of the engineering and traffic characteristics thereof, the maximum and minimum desirable speeds for all traffic facilities in the state highway system.

(2) These regulatory speeds shall be effective when appropriate signs giving notice thereof are erected.

(b)(1) The maximum and minimum speed limits posted shall apply to all vehicles using the facility except authorized emergency vehicles on emergency trips, such as police vehicles on duty, fire vehicles on calls, and ambulances; oversize/overweight vehicles moving under special permit issued by the Arkansas State Highway and Transportation Department or its lawfully delegated agents; and other specific vehicles for which special limits may be posted in particular situations or under particular conditions.

(2) This exemption shall not relieve any driver of an authorized emergency vehicle from his lawful responsibility to drive with due regard for the safety of all persons upon or using the highway facility, nor shall it protect the operator of any such vehicle from the consequence of a reckless disregard for the safety of others.

**History.** Acts 1971, No. 61, § 2; A.S.A. 1947, § 75-601.2.

## CASE NOTES

**Driver of Emergency Vehicle.**

The driver of an emergency vehicle is held to a standard of ordinary care. City of

Little Rock v. Weber, 298 Ark. 382, 767 S.W.2d 529 (1989).

**27-51-205. Right of local authorities to enforce limits.**

(a) No local authority shall alter, amend, annul, or abrogate any posted speed regulation on any facility of the state highway system, but may, in regard to facilities traversing their respective jurisdictions, petition the State Highway Commission in a hearing to present argument on such potential action.

(b) This section is supplemental to existing law and shall in no way derogate the duty of local courts, local peace officers, and the Department of Arkansas State Police to enforce posted traffic and speed regulations within their jurisdictions.

**History.** Acts 1971, No. 61, § 3; A.S.A. 1947, § 75-601.3.

**27-51-206. Local authorities may alter prima facie speed limits.**

(a) Whenever local authorities within their respective jurisdictions determine upon the basis of an engineering and traffic investigation that the prima facie speed permitted under this subchapter at any intersection is greater than is reasonable or safe under the conditions found to exist at the intersection, then the local authority shall determine and declare a reasonable and safe prima facie speed limit, which shall be effective when appropriate signs giving notice are erected at such intersection or upon the approaches thereto if approved by the State Highway Commission.

(b) Local authorities in their respective jurisdictions may, in their discretion, authorize by ordinance higher prima facie speeds than those stated in § 27-51-201 upon through highways or upon highways or portions thereof where there are no intersections or between widely spaced intersections, if signs are erected giving notice of the authorized speed, but local authorities shall not have authority to modify or alter the basic rule set forth in § 27-51-201(a) or in any event to authorize by ordinance a speed in excess of forty-five miles per hour (45 m.p.h.).

**History.** Acts 1937, No. 300, § 52; **Cross References.** Municipality may Pope's Dig., § 6710; A.S.A. 1947, § 75-602, punish speeding, § 14-54-103.

**27-51-207. Assistance to local authorities in determining limits.**

Local authorities may request professional assistance of the Arkansas State Highway and Transportation Department in determining reasonable and prudent maximum and minimum speeds for arterial

highways, roads, and streets not on the state highway system in their respective jurisdictions.

**History.** Acts 1971, No. 61, § 4; A.S.A. 1947, § 75-601.4.

## 27-51-208. Minimum speed regulation.

(a) No person shall drive a motor vehicle at such a slow speed as to impede the normal and reasonable movement of traffic except when reduced speed is necessary for safe operation or in compliance with the law.

(b) Whenever the State Highway Commission or local authorities, within their respective jurisdictions, on the basis of an engineering and traffic investigation determine that slow speeds on any part of a highway consistently impede the normal and reasonable movement of traffic, the commission or the local authority may determine and declare a minimum speed limit below which no person shall drive a vehicle except when necessary for safe operation or in compliance with the law.

**History.** Acts 1937, No. 300, § 53; Pope's Dig., § 6711; Acts 1959, No. 307, § 34; A.S.A. 1947, § 75-604.

**Cross References.** Penalty for violation of 1959 amendatory act, § 27-50-305.

## CASE NOTES

### ANALYSIS

Court Determinations.  
Instructions.  
Stopping by Police.

### Court Determinations.

Where a slowly moving vehicle is struck from the rear by another vehicle, it is for the trial court to determine whether or not such slowness of speed is negligence and, if so, the extent to which it contributed as a proximate cause to the collision. *Mad-dux v. Cox*, 382 F.2d 119 (8th Cir. 1967).

### Instructions.

Where a motorcycle ridden by a minor and a car driven by the defendant collided, it was not reversible error to refuse to instruct the jury that a minor should not be held to the same standard of care as an adult and that a higher degree of care is owed to minors, as this section and §§ 27-16-204, 27-16-206, 27-16-207, 27-51-201, 27-51-209 — 27-51-211, and 27-51-308, pertaining to safety on the highways, disclose no distinction between the degree of care to be exercised by a minor and an

adult. *Harrelson v. Whitehead*, 236 Ark. 325, 365 S.W.2d 868 (1963).

An instruction on subsection (a) of this section was applicable in a case where defendant was operating his farm tractor at 14 miles per hour on a highway and was struck from the rear by plaintiff's automobile, which was traveling about 50 miles per hour when plaintiff first observed the tractor about 25 paces ahead of him, with evidence plaintiff was unable to pass defendant because of oncoming traffic in the lane to the left. *Hooten v. De Jarnatt*, 237 Ark. 792, 376 S.W.2d 272 (1964).

Decedent died when his vehicle hit the back of a farm tractor on a highway; on appeal, the administratrix claimed that the trial court erred in not giving proffered jury instructions arising out of the breach of certain statutes, which included § 27-51-208(a). There was some evidence that the tractor driver was driving at a slow speed at the time of the accident; therefore, there was some evidence to support giving the instruction. *McMickle v. Griffin*, 369 Ark. 318, 254 S.W.3d 729 (2007).



**Stopping by Police.**

Where a state police officer observed an automobile with out-of-state license plates which was traveling at a slow rate of speed on an interstate highway and which contained two occupants sitting low in the seat, he was justified in stopping

the vehicle to investigate the reason for the slow speed and to determine the age of the operator. *Perez v. State*, 260 Ark. 438, 541 S.W.2d 915 (1976).

**Cited:** *McMickle v. Griffin*, 369 Ark. 318, 254 S.W.3d 729 (2007).

**27-51-209. Driving over bridges or other elevated structures.**

(a) No person shall drive a vehicle over any bridge or other elevated structure constituting a part of a highway at a speed which is greater than the maximum speed which can be maintained with safety to the bridge or structure when the structure is signposted as provided in this section.

(b) Upon request from any local authority, the State Highway Commission shall, or upon its own initiative may, conduct an investigation of any bridge or other elevated structure constituting a part of a highway. If it shall find that the structure cannot, with safety to itself, withstand vehicles traveling at the speed otherwise permissible under this subchapter, the commission shall determine and declare the maximum speed of vehicles which the structure can safely withstand and shall cause or permit suitable signs stating the maximum speed to be erected and maintained at a distance of one hundred feet (100') before each end of the structure.

(c) Upon the trial of any person charged with a violation of this section, proof of the determination of the maximum speed by the commission and the existence of the signs shall constitute conclusive evidence of the maximum speed which can be maintained with safety to the bridge or structure.

**History.** Acts 1937, No. 300, § 54; Pope's Dig., § 6712; Acts 1959, No. 307, § 35; A.S.A. 1947, § 75-605.

**Cross References.** Penalty for violation of 1959 amendatory act, § 27-50-305.

**CASE NOTES****Instructions.**

Where a motorcycle ridden by a minor and a car driven by the defendant collided, it was not reversible error to refuse to instruct the jury that a minor should not be held to the same standard of care as an adult and that a higher degree of care is owed to minors, as this section and §§ 27-

16-204, 27-16-206, 27-16-207, 27-51-201, 27-51-208, 27-51-210, 27-51-211, 27-51-306, and 27-51-308, pertaining to safety on the highways, disclose no distinction between the degree of care to be exercised by a minor and an adult. *Harrelson v. Whitehead*, 236 Ark. 325, 365 S.W.2d 868 (1963).

**27-51-210. Towing of manufactured homes and mobile homes.**

(a) No person shall drive a vehicle that is towing a manufactured home or mobile home at a speed greater than fifty-five miles per hour (55 m.p.h.).

(b) On roads upon which the posted speed limit is less than fifty-five miles per hour (55 m.p.h.), the posted speed limit shall be observed.

(c) The Arkansas State Highway and Transportation Department may set minimum and maximum speed limits different from those posted or may set a speed limit less than the maximum provided in subsections (a) and (b) of this section for a vehicle towing a manufactured home or mobile home by noting any speed restriction on the oversize load permit issued by the department to that vehicle.

**History.** Acts 1937, No. 300, § 54; 1959, No. 307, § 35; A.S.A. 1947, § 75-605; Acts 2001, No. 1136, § 1.

**Cross References.** Penalty for violation of 1959 amendatory act, § 27-50-305.

### CASE NOTES

#### Instructions.

Where a motorcycle ridden by a minor and a car driven by the defendant collided, it was not reversible error to refuse to instruct the jury that a minor should not be held to the same standard of care as an adult and that a higher degree of care is owed to minors, as this section and §§ 27-

16-204, 27-16-206, 27-16-207, 27-51-201, 27-51-208, 27-51-209, 27-51-211, 27-51-306, and 27-51-308, pertaining to safety on the highways, disclose no distinction between the degree of care to be exercised by a minor and an adult. *Harrelson v. Whitehead*, 236 Ark. 325, 365 S.W.2d 868 (1963).

### 27-51-211. Use of nonpneumatic tires.

No person shall drive any vehicle equipped with solid rubber or cushion tires at a speed greater than a maximum of ten miles per hour (10 m.p.h.).

**History.** Act 1937, No. 300, § 54; Pope's Dig., § 6712; Acts 1959, No. 307, § 35; A.S.A. 1947, § 75-605.

**Cross References.** Penalty for violation of 1959 amendatory act, § 27-50-305.

### CASE NOTES

#### Instructions.

Where a motorcycle ridden by a minor and a car driven by the defendant collided, it was not reversible error to refuse to instruct the jury that a minor should not be held to the same standard of care as an adult and that a higher degree of care is owed to minors, as this section and §§ 27-

16-204, 27-16-206, 27-16-207, 27-51-201, 27-51-208 — 27-51-210, 27-51-306, and 27-51-308, pertaining to safety on the highways, disclose no distinction between the degree of care to be exercised by a minor and an adult. *Harrelson v. Whitehead*, 236 Ark. 325, 365 S.W.2d 868 (1963).

### 27-51-212. Speed limit near schools — Exceptions.

(a) No person shall operate a motor vehicle in excess of twenty-five miles per hour (25 m.p.h.) when passing a school building or school zone during school hours when children are present and outside the building.

(b) This speed limit shall not be applicable upon the freeways and interstate highways of this state or to school zones adequately protected by a steel fence limiting access to and egress from safety crossings.

**History.** Acts 1977, No. 229, § 1; A.S.A. 1947, § 75-601.5.

### **27-51-213. Erection and maintenance of required signs in school zones.**

(a)(1) A school zone shall include a distance of three hundred feet (300') on either side of a school building or school grounds and shall be posted with appropriate signs showing: "SCHOOL — 25 M.P.H. WHEN CHILDREN ARE PRESENT".

(2) At an appropriate distance before reaching this sign, a school advance sign shall be erected.

(3) A third sign at the end of the school zone shall designate the speed limit the motor vehicle may resume.

(b)(1)(A) It shall be the duty of the Arkansas State Highway and Transportation Department, county road department, city street department, or any other agency having the responsibility of maintaining the streets or roadways to erect the signs required by subsection (a) of this section unless a special traffic engineering study for a specific school zone produces other recommendations for that school zone.

(B) The maximum speed limit shall not be increased above the limitation provided in subsection (a) of this section.

(2) Signs shall be maintained and replaced using the same criteria that is used to maintain and replace "STOP" signs and other warning signs.

(3) All signs and signing locations will be in accordance with the regulations contained in the current Manual on Uniform Traffic Control Devices.

**History.** Acts 1977, No. 229, § 2; A.S.A. 1947, § 75-601.6.

**Cross References.** Traffic control devices generally, § 27-52-101 et seq.

### **27-51-214. Penalties for speeding in school zone.**

Any person who violates any of the provisions of § 27-51-212 or § 27-51-213 shall upon conviction be guilty of a misdemeanor and shall be punished as follows:

(1) For a first conviction, an offender shall be punished by a fine of not less than twenty-five dollars (\$25.00) nor more than one hundred dollars (\$100) or by imprisonment in the county jail for not less than one (1) day nor more than ten (10) days, or by both fine and imprisonment;

(2)(A) For a conviction of a second violation within one (1) year, an offender shall be punished by a fine of not less than fifty dollars (\$50.00) nor more than two hundred fifty dollars (\$250) or by imprisonment in the county jail for not less than five (5) days nor more than twenty-five (25) days, or by both fine and imprisonment.

(B) In addition, the Office of Driver Services of the Department of Finance and Administration shall suspend the driving privilege of the



person for a period of six (6) months upon receipt of notice of a final conviction; and

(3)(A) For a conviction of a third or subsequent violation within one (1) year, an offender shall be punished by a fine of not less than two hundred fifty dollars (\$250) nor more than one thousand dollars (\$1,000) or by imprisonment in the county jail for not less than twenty-five (25) days nor more than six (6) months, or both fine and imprisonment.

(B) In addition, the office shall suspend the driving privilege of the person for a period of one (1) year upon receipt of notice of a final conviction.

**History.** Acts 1977, No. 229, § 4; A.S.A. 1947, § 75-601.8.

### **27-51-215. Arkansas Primary Highway Network study.**

(a) The State Highway Commission shall conduct a study of the Arkansas Primary Highway Network to determine whether the minimum speed limits and maximum speed limits of the network can be raised in any locations on the network based on the engineering analysis, traffic analysis, and other analysis of characteristics of each location.

(b)(1) The study shall include an impact analysis of raising the minimum speed limits and maximum speed limits in regard to:

(A) Pleasure vehicles licensed under § 27-14-601 or similarly licensed vehicles from other states;

(B) Trucks with a gross loaded weight of twenty thousand pounds (20,000 lbs.) or less; and

(C) Trucks with a gross loaded weight of more than twenty thousand pounds (20,000 lbs.).

(2) The impact analysis shall take into consideration the costs and benefits to the citizens of this state, the costs and benefits to the trucking industry, the costs and benefits to the insurance industry, and an explanation of any other costs and benefits that can be ascertained based on the available data.

(c) The study shall also include:

(1) Findings related to the minimum speed limits and maximum speed limits on two-lane highways and four-lane highways in the Arkansas Primary Highway Network; and

(2) Recommendations as to which, if any, vehicles should be exempt from any proposed speed limit changes.

(d) Upon completion of the study, the commission shall increase the speed limit on any two-lane highway or four-lane highway to sixty-five miles per hour (65 m.p.h.) if the findings of the study support the increase on a particular two-lane highway or four-lane highway.

(e) The commission shall prepare its findings and recommendations in a written report and present the report to the Legislative Council on or before September 15, 2008.

**History.** Acts 2007, No. 242, § 1.

## **27-51-216. Speed limits and traffic-control devices on county roads — Penalty.**

(a) As used in this section, “county road” means a public road that is not a state highway, interstate highway, or city street within the jurisdiction of a given county.

(b)(1) Each county judge may establish speed limits on county roads within the jurisdictional boundaries of his or her county.

(2) If a county judge has not established a speed limit on a county road within the jurisdictional boundaries of his or her county, then the speed limit shall be forty miles per hour (40 m.p.h.) on the county road.

(c)(1) A person who pleads guilty or nolo contendere to or is found guilty of a violation of a speed limit on a county road established by a county judge or as provided under this section shall be assessed a penalty as provided under § 27-50-305.

(2) A person who pleads guilty or nolo contendere to or is found guilty of speeding in excess of fifteen miles per hour (15 m.p.h.) over the posted speed limit on a county road established by a county judge or as provided under this section is guilty of a Class C misdemeanor.

(d) A traffic-control device that is erected on a county road shall conform to the uniform manual on traffic-control devices adopted by the State Highway Commission.

**History.** Acts 2007, No. 667, § 1.

## **SUBCHAPTER 3 — DRIVING, OVERTAKING, AND PASSING**

### **SECTION.**

27-51-301. Vehicles to be driven on right side of roadway — Exceptions.

27-51-302. Driving on roadways laned for traffic.

27-51-303. Passing a vehicle proceeding in opposite direction.

27-51-304. One-way roadways and rotary traffic islands.

27-51-305. Following too closely.

27-51-306. Overtaking of vehicle on left.

### **SECTION.**

27-51-307. Restrictions on passing overtaken vehicle on left.

27-51-308. Conditions when overtaking on right.

27-51-309. Center left-turn lane.

27-51-310. Passing emergency response vehicle or law enforcement vehicle stopped on highway.

27-51-311. Overtaking a bicycle.

**Effective Dates.** Acts 1937, No. 300, § 165; Mar. 23, 1937. Emergency clause provided: “It is hereby ascertained and determined by the General Assembly that the proper regulation of traffic on the highways is a necessary function of the State Government, and that the loss of life and property under the present laws creates an emergency. Therefore, this act

being necessary for the immediate preservation of the public peace, health and safety, shall go into effect immediately upon its passage and approval.”

Acts 2003, No. 1102, § 2; Apr. 4, 2003. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that deaths have often occurred when police vehicles are

parked on the road shoulders during law enforcement activities; that on multi-lane highways this could be avoided by requiring drivers to pass the scene in the furthest lane from the stopped police vehicle; that this act so provides; and that until this act becomes effective the danger will remain. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the

public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

RESEARCH REFERENCES

Am. Jur. 7A Am. Jur. 2d, Auto., § 260 et seq.

C.J.S. 60A C.J.S., Motor Veh., § 274 et seq.

27-51-301. Vehicles to be driven on right side of roadway — Exceptions.

- (a) Upon all roadways of sufficient width, a vehicle shall be driven upon the right half of the roadway, except as follows:
- (1) When overtaking and passing another vehicle proceeding in the same direction under the rules governing that movement;
  - (2) When the right half of a roadway is closed to traffic while under construction or repair;
  - (3) Upon a roadway divided into three (3) marked lanes for traffic under the rules applicable thereon; or
  - (4) Upon a roadway designated and signposted for one-way traffic.
- (b) Motor vehicles shall not be operated continuously in the left lane of a multilane roadway whenever it impedes the flow of other traffic.

**History.** Acts 1937, No. 300, § 56; Pope’s Dig., § 6714; A.S.A. 1947, § 75-607; Acts 1997, No. 854, § 1.

CASE NOTES

ANALYSIS

Applicability.  
Evidence of Negligence.  
Impeding Traffic.  
Instructions.  
Jury Questions.  
Jury Trial.

**Applicability.**  
Police officer was entitled as a matter of law to qualified immunity on civil rights and tort claims asserted by appellee father because the undisputed facts demonstrated probable cause for the father’s arrest for driving on the wrong side of the

road in contravention of subsection (a) of this section. *Martin v. Hallum*, 2010 Ark. App. 193, — S.W.3d — (2010).

**Evidence of Negligence.**  
A violation of this section, while not conclusive of the issue, may be evidence of negligence on the part of the violator. *Kisor v. Tulsa Rendering Co.*, 113 F. Supp. 10 (W.D. Ark. 1953).  
Fact that truck traveled distance of 100 yards on left side of pavement, continued on left shoulder, struck culvert, and overturned without driver having applied brakes or attempted to turn right showed this section had been violated, and this



fact was evidence of negligence. *Frisby v. Olin Mathieson Chem. Corp.*, 279 F.2d 939 (8th Cir. 1960).

#### **Impeding Traffic.**

Police officer had reasonable suspicion to stop defendant's vehicle after he observed that defendant's vehicle was obstructing traffic in the left lane. *Sims v. State*, 356 Ark. 507, 157 S.W.3d 530 (2004).

#### **Instructions.**

Where the only action on the plaintiff's part, which the defendant insisted contributed to the plaintiff's injury, was that he was in the act of passing a parked truck and had not succeeded in getting back on his side of the road when the collision occurred, an instruction that the jury should find for the defendant if the plaintiff was not on his side of the road did not omit the defense of contributory negligence. *Standard Materials Corp. v. Johnson*, 205 Ark. 562, 169 S.W.2d 590 (1943).

In a wrongful death action brought by the personal representative of the guest passenger of a deceased automobile driver, an instruction that violation of this section by the driver, if established by the evidence, could be considered by the jury in determining whether or not the driver was guilty of willful or wanton misconduct in the operation of the vehicle was prop-

erly refused, as it would have led the jury to the erroneous belief that such violation was evidence of willful and wanton misconduct. *Shearer v. Newsom*, 250 Ark. 33, 463 S.W.2d 642 (1971).

#### **Jury Questions.**

One driving a vehicle had to keep to the right side of the road, and whether this requirement was done or not was a question for the jury in determining the question of negligence. *Northwestern Cas. & Sur. Co. v. Rose*, 185 Ark. 263, 46 S.W.2d 796 (1932) (decision under prior law).

#### **Jury Trial.**

Appellate court erred in reversing and dismissing case, in which defendant was convicted for driving left of center, for failure to grant a jury trial rather than remanding the case, because: 1) defendant sought reversal and remand; 2) such failure does not require dismissal under the double jeopardy clause; and 3) defendant should have been given a chance to have his case fairly put to a jury. *Elmore v. State*, 305 Ark. 426, 809 S.W.2d 370 (1991).

**Cited:** *Williamson v. Rainwater*, 236 Ark. 885, 370 S.W.2d 443 (1963); *Smith v. City of Little Rock*, 305 Ark. 168, 806 S.W.2d 371 (1991); *King v. State*, 42 Ark. App. 97, 854 S.W.2d 362 (1993); *Hoay v. State*, 75 Ark. App. 103, 55 S.W.3d 782 (2001).

### **27-51-302. Driving on roadways laned for traffic.**

Whenever any roadway has been divided into two (2) or more clearly marked lanes for traffic, the following rules in addition to all others consistent with this subchapter shall apply:

(1) A vehicle shall be driven as nearly as practical entirely within a single lane and shall not be moved from the lane until the driver has first ascertained that movement can be made with safety; and

(2) Official signs may be erected directing slower-moving traffic to use a designated lane or allocating specified lanes to traffic moving in the same direction, and drivers of vehicles shall obey the directions of every such sign.

**History.** Acts 1937, No. 300, § 62; Pope's Dig., § 6720; A.S.A. 1947, § 75-613; Acts 2001, No. 312, § 1.

## CASE NOTES

## ANALYSIS

Instructions.  
Safety.

**Instructions.**

In damage action growing out of a collision resulting when an automobile in the second lane from the curb attempted a right turn into a driveway and another behind it attempted to move into the curb lane preparatory to making a right turn at the intersection ahead, a jury instruction embodying subdivision (1) of this section

was applicable and applied with equal force to both drivers. *Moore v. Cook*, 243 Ark. 502, 420 S.W.2d 905 (1967).

**Safety.**

Road conditions in and of themselves do not constitute negligence; the issue, rather, is how people perform under those conditions. *Sublett v. Hipps*, 330 Ark. 58, 952 S.W.2d 140 (1997).

**Cited:** *Smith v. City of Little Rock*, 305 Ark. 168, 806 S.W.2d 371 (1991); *Hoay v. State*, 75 Ark. App. 103, 55 S.W.3d 782 (2001).

**27-51-303. Passing a vehicle proceeding in opposite direction.**

Drivers of vehicles proceeding in opposite directions shall pass each other to the right. Upon roadways having width for not more than one (1) line of traffic in each direction, each driver shall give to the other at least one-half ( $\frac{1}{2}$ ) of the main-traveled portion of the roadway as nearly as possible.

**History.** Acts 1937, No. 300, § 57; Pope's Dig., § 6715; A.S.A. 1947, § 75-608.

## CASE NOTES

**Evidence of Negligence.**

A violation of this section, while not conclusive of the issue, may be evidence of

negligence on the part of the violator. *Kisor v. Tulsa Rendering Co.*, 113 F. Supp. 10 (W.D. Ark. 1953).

**27-51-304. One-way roadways and rotary traffic islands.**

(a) Upon a roadway designated and signposted for one-way traffic, a vehicle shall be driven only in the direction designated.

(b) A vehicle passing around a rotary traffic island shall be driven only to the right of such island.

**History.** Acts 1937, No. 300, § 61; Pope's Dig., § 6719; A.S.A. 1947, § 75-612.

**27-51-305. Following too closely.**

(a) The driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of vehicles and the traffic upon and the condition of the highway.

(b)(1) The driver of any motor truck or any motor vehicle drawing another vehicle when traveling upon a roadway outside of a business or

residence district shall not follow within two hundred feet (200') of another motor vehicle.

(2) The provisions of this subsection shall not be construed to prevent overtaking and passing.

**History.** Acts 1937, No. 300, § 63; Pope's Dig., § 6721; A.S.A. 1947, § 75-614; Acts 2001, No. 998, § 1.

## CASE NOTES

### ANALYSIS

Burden of Proof.  
Instructions.  
Proximate Cause.

#### Burden of Proof.

Where the evidence tended to show that defendant truck driver slowed down his speed to that of the car preceding him and maintained a distance of 80 to 100 feet behind the car in a hazard free 60 mile an hour zone of highway without ever attempting to pass the car and that an oncoming car veered from its proper lane and struck the car preceding defendant and propelled that car into defendant's truck, plaintiff failed to prove that defendant followed the preceding car too closely. *Superior Forwarding Co. v. Garner*, 236 Ark. 340, 366 S.W.2d 290 (1963).

By the employee's own admission, the employee was aware that the third vehicle twice braked, causing both the employee, driving a tractor-trailer and the injured person to slow down; thus while there was evidence that the driver of the third vehicle was negligent, fair-minded people could only have concluded that the employee was following too closely, and the jury's verdict in favor of the employee and his employer was not supported by substantial evidence. *Dovers v. Stephenson Oil Co.*, 81 Ark. App. 92, 98 S.W.3d 462 (2003).

#### Instructions.

The court was more than justified in refusing to instruct the jury in accordance with this section where there was a total absence of evidence raising an issue of

following too closely, inasmuch as the law requires not merely evidence, but substantial evidence, in order to create a submissible issue for the jury's deliberation. *Stewart v. Key Co.*, 267 Ark. 790, 590 S.W.2d 872 (Ct. App. 1979).

#### Proximate Cause.

Although truck driver failed to give signal before turning where driver in rear truck was following too closely, jury could properly find that the proximate cause of the collision was the negligence of the rear driver in following too closely. *Jones v. King*, 211 Ark. 1084, 204 S.W.2d 548 (1947).

Where driver of the following car ascertained that he could not pass leading car because of oncoming traffic and pulled in so closely behind leading car that he was unable to decrease his speed or stop when leading car decreased its speed without signal because of suddenly seeing a truck parked partly on highway and ran into the rear of the leading car, his action in driving too closely behind the leading car was an act of negligence which was the proximate cause of the accident. *Waycaster v. Sorenson*, 124 F. Supp. 892 (W.D. Ark. 1954).

Where defendant's driver was following too close to the preceding vehicle and he failed to keep a proper lookout and also failed to have his vehicle under reasonable control, his negligence was the proximate cause of the accident. *Keene v. George Enters., Inc.*, 145 F. Supp. 641 (W.D. Ark. 1956).

**Cited:** *Gonzalez v. State*, 32 Ark. App. 10, 794 S.W.2d 620 (1990); *Craighead Elec. Coop. Corp. v. Craighead County*, 352 Ark. 76, 98 S.W.3d 414 (2003).



**27-51-306. Overtaking of vehicle on left.**

The following rules shall govern the overtaking and passing of vehicles proceeding in the same direction, subject to those limitations, exceptions, and special rules stated:

(1) The driver of a vehicle overtaking another vehicle proceeding in the same direction shall pass to the left at a safe distance and shall not again drive to the right side of the roadway until safely clear of the overtaken vehicle; and

(2) Except when overtaking and passing on the right is permitted, the driver of an overtaken vehicle shall yield to the right in favor of the overtaking vehicle and shall not increase the speed of his or her vehicle until completely passed by the overtaking vehicle.

**History.** Acts 1937, No. 300, § 58; Pope's Dig., § 6716; A.S.A. 1947, § 75-609; Acts 2001, No. 220, § 1.

**CASE NOTES****ANALYSIS**

Instructions.

Overtaking Turning Vehicles.  
Yielding Right of Way.

**Instructions.**

In an action to recover for injuries received when a bus attempted to pass the automobile in which the plaintiff was riding, it was alleged that the driver of the bus carelessly and negligently undertook to pass and go around the automobile without any signal or warning and this allegation was supported by testimony, and instruction telling the jury that, under former statute "the driver of any overtaking vehicle ... shall give audible warning with his horn or other warning device before passing a vehicle proceeding in the same direction" was not abstract, but responsive to the issues in the case. *Crown Coach Co. v. Palmer*, 193 Ark. 739, 102 S.W.2d 853 (1937) (decision under prior law).

Where a motorcycle ridden by a minor and a car driven by the defendant collided, it was not reversible error to refuse to instruct the jury that a minor should not be held to the same standard of care as an adult and that a higher degree of care is owed to minors, as this section and §§ 27-16-204, 27-16-206, 27-16-207, 27-51-201, 27-51-208 — 27-51-211, and 27-51-308, pertaining to safety on the highways, disclose no distinction between the degree of

care to be exercised by a minor and an adult. *Harrelson v. Whitehead*, 236 Ark. 325, 365 S.W.2d 868 (1963).

It was error to embody this section in an instruction in a negligence action without also informing the jury that the section did not apply to the defendant being overtaken if he was making a lawful left turn, i.e., if he had given the proper signals for the left turn. *Nelson v. Underwood*, 244 Ark. 1065, 429 S.W.2d 102 (1968).

It was error to embody subdivision (2) of this section into an instruction in an automobile collision negligence case where both drivers had entered the passing lane, one to pass the other and the other to pass a third driver, and there was no evidence that either driver had sounded an audible signal. *Smith v. Alexander*, 245 Ark. 567, 433 S.W.2d 157 (1968).

There is no conflict between an instruction embodying this section and other sections concerning the manner of turning and changing lanes and the giving of signals in doing so and another instruction that instructs the jury that of two vehicles traveling in the same direction the one in front has the superior right to the use of the highway for the purpose of leaving it to enter intersecting roads or passageways. *Wasson v. Warren*, 245 Ark. 719, 434 S.W.2d 51 (1968).

Where court gave instruction in negligence case, quoting this section, which made reference to an audible signal de-

spite the lack of any evidence that one was given, the instruction was abstract and could have been prejudicial, and thus constituted reversible error. *Neal v. J.B. Hunt Transp., Inc.*, 305 Ark. 97, 805 S.W.2d 643 (1991).

Where no evidence was presented that defendant, in a personal injury action, sounded a signal as he passed plaintiff, proffered jury instruction which asserted that once the overtaking vehicle gives an audible signal the overtaken vehicle must yield the right-of-way, even though he has properly given a turn signal, was not relevant, and the trial court's refusal to give it was not error. *Richey v. Luffman*, 311 Ark. 81, 841 S.W.2d 622 (1992).

#### **Overtaking Turning Vehicles.**

This section is not applicable if the driver of the overtaken vehicle is making

a lawful turn and the proper signals have been given; the driver of the overtaking vehicle must handle his automobile in accordance with the idea that the forward vehicle has the superior right to the use of the highway for the purpose of leaving it to enter an intersecting road or passageway. *Downs v. Reed*, 247 Ark. 588, 446 S.W.2d 657 (1969).

#### **Yielding Right of Way.**

Subdivision (2) of this section places a duty on the overtaken driver to yield right of way only if the overtaking driver does use an audible signal. *Richey v. Luffman*, 311 Ark. 81, 841 S.W.2d 622 (1992).

**Cited:** *Woods v. Pearce*, 230 Ark. 859, 327 S.W.2d 377 (1959); *Butler v. Dowdy*, 304 Ark. 481, 803 S.W.2d 534 (1991); *Kelley v. Medlin*, 309 Ark. 146, 827 S.W.2d 655 (1992).

### **27-51-307. Restrictions on passing overtaken vehicle on left.**

(a)(1) No vehicle shall be driven to the left side of the center of the roadway in overtaking and passing another vehicle proceeding in the same direction unless the left side is clearly visible and is free of oncoming traffic for a sufficient distance ahead to permit overtaking and passing to be completely made without interfering with the safe operation of any vehicle approaching from the opposite direction or any vehicle overtaken.

(2) In every event, the overtaking vehicle must return to the right-hand side of the roadway before coming within one hundred feet (100') of any vehicle approaching from the opposite direction.

(b) No vehicle shall, in overtaking and passing another vehicle or at any other time, except upon a one-way roadway, be driven to the left side of the roadway, under the following conditions:

(1) When approaching the crest of a grade or upon a curve in the highway where the driver's view along the highway is obstructed;

(2) When approaching within one hundred feet (100') of or traversing any intersection or railroad grade crossing;

(3) When the view is obstructed upon approaching within one hundred feet (100') of any bridge, viaduct, or tunnel; and

(4) Where official signs are in place directing that traffic keep to the right or a distinctive center line is marked, which distinctive lines also so direct traffic as declared in the sign manual adopted by the State Highway Commission.

**History.** Acts 1937, No. 300, § 60; Pope's Dig., § 6718; Acts 1959, No. 307, § 26; 1971, No. 161, § 1; A.S.A. 1947, § 75-611.

**Cross References.** Penalty for violation of 1959 amendatory act, § 27-50-305.



## CASE NOTES

## ANALYSIS

Instructions.  
Negligence.  
Proximate Cause.  
Violation.

**Instructions.**

In a wrongful death action brought by the personal representative of the guest passenger of a deceased automobile driver, an instruction that violation of this section by the driver, if established by the evidence, could be considered by the jury in determining whether or not the driver was guilty of willful or wanton misconduct in the operation of the vehicle was properly refused, as it would have led the jury to the erroneous belief that such violation was evidence of willful and wanton misconduct. *Shearer v. Newsom*, 250 Ark. 33, 463 S.W.2d 642 (1971).

**Negligence.**

In action for personal injury, evidence that boy ran out of his home and into street some distance from intersection and that he ran in front of a truck and then in front of defendant's automobile, which was in the process of passing the truck, held not to show negligence, absent evidence of speeding or failure to keep a lookout, or that driver saw the boy as he darted past the truck in front of the automobile, or that driver did not apply brakes and stop the car as quickly as possible. *Lowe v. Ivy*, 204 Ark. 623, 164 S.W.2d 429 (1942).

In action for injuries sustained when defendant's truck started passing a bus and ran into plaintiff's car almost head on, evidence was sufficient to justify the jury, in a finding that the driver of the truck was negligent in failing to keep a proper lookout or in failing to observe the provisions of this section. *Franklin v. Badinelli*, 205 Ark. 265, 168 S.W.2d 397 (1943).

Collision with another vehicle proceeding in same direction, which occurred on or near bridge, held due to negligence in attempting to pass another vehicle while

within 100 feet of a bridge. *Nicholas v. Bingamon*, 219 Ark. 748, 244 S.W.2d 782 (1952).

Driver of overtaking car was not guilty of negligence as a matter of law in attempting to pass slowly driven car at railroad intersection where driver of front car made left turn without indicating his intentions by manual signal. *Hagan v. Knowles*, 223 Ark. 590, 267 S.W.2d 514 (1954).

Where defendant was driving in excess of the speed limit and plaintiff driving in front approached intersection at which he intended to turn left and after giving a proper signal yielded the right-of-way to approaching vehicles before turning left, but the defendant in the following vehicle not being able to stop swerved into the other lane of traffic and struck plaintiff after he had almost completed his left turn, plaintiff was not guilty of contributory negligence and the negligence of the defendant was the proximate cause of the collision. *Dearing v. Ferrell*, 165 F. Supp. 508 (W.D. Ark. 1958).

**Proximate Cause.**

An automobile driver's negligence in attempting to pass a truck ahead of him while descending a hill was held to be the sole proximate cause of a collision with an approaching truck. *Universal Auto. Ins. Co. v. Denton*, 185 Ark. 899, 50 S.W.2d 592 (1932) (decision under prior law).

Where the plaintiff was struck by a passing car at a point where there was no room for the car to pass without striking the plaintiff on account of the defendant's truck obstructing the highway, the causal connection between the defendant's negligence and the injury was not broken. *Coca-Cola Bottling Co. v. McAnulty*, 185 Ark. 970, 50 S.W.2d 577 (1932) (decision under prior law).

**Violation.**

At most, the violation of this section would be only evidence of negligence. *Lowe v. Ivy*, 204 Ark. 623, 164 S.W.2d 429 (1942).



**27-51-308. Conditions when overtaking on right.**

(a) The driver of a vehicle may overtake and pass upon the right of another vehicle only under the following conditions:

(1) When the vehicle overtaken is making or about to make a left turn;

(2) Upon a street or highway with unobstructed pavement not occupied by parked vehicles of sufficient width for two (2) or more lines of moving vehicles in each direction; and

(3) Upon a one-way street or upon any roadway on which traffic is restricted to one (1) direction of movement where the roadway is free from obstructions and of sufficient width for two (2) or more lines of moving vehicles.

(b)(1) The driver of a vehicle may overtake and pass another vehicle upon the right only under conditions permitting this movement in safety.

(2) In no event shall this movement be made by driving off the pavement or main-traveled portion of the roadway.

**History.** Acts 1937, No. 300, § 59; Pope's Dig., § 6717; Acts 1959, No. 307, § 25; A.S.A. 1947, § 75-610. **Cross References.** Penalty for violation of 1959 amendatory act, § 27-50-305.

**CASE NOTES****ANALYSIS**

Instructions.

Jury Questions.

Negligence.

**Instructions.**

Where a motorcycle ridden by a minor and a car driven by the defendant collided, it was not reversible error to refuse to instruct the jury that a minor should not be held to the same standard of care as an adult and that a higher degree of care is owed to minors, as this section and §§ 27-16-204, 27-16-206, 27-16-207, 27-51-201, 27-51-208 — 27-51-211, and 27-51-306, pertaining to safety on the highways, disclose no distinction between the degree of care to be exercised by a minor and an adult. *Harrelson v. Whitehead*, 236 Ark. 325, 365 S.W.2d 868 (1963).

**Jury Questions.**

Whether the curb lane of a four-lane street was part of the traveled portion of the street or of the "shoulder" within the

meaning of this section when such lane was marked and divided into parking spaces with parking meters on the curb was a question of fact, and the finding of a jury in an automobile collision case for the driver attempting to pass in such lane a car ahead in the second lane from the curb indicated their conclusion that it was part of the roadway regularly used, absent parked vehicles. *Moore v. Cook*, 243 Ark. 502, 420 S.W.2d 905 (1967).

**Negligence.**

Where automobile stopped near the center of four-lane road at intersection with through highway, and truck intending to turn right on highway pulled to the right of the automobile near the edge of the road, and automobile, though its driver's view was obstructed by truck, drove across and was struck by another automobile traveling on through highway which had the right-of-way, driver of truck was not guilty of any negligence. *Ozark Natural Gas Co. v. Moore*, 201 Ark. 283, 144 S.W.2d 35 (1940).

**27-51-309. Center left-turn lane.**

(a) As used in this section, “center left-turn lane” means a center lane on any road or highway that is for the purpose of executing two-way left turns in either direction and that is so marked by signage or striping.

(b)(1) A center left-turn lane shall be for the exclusive use of a left-turning vehicle in either direction.

(2) A center left-turn lane shall not be used for through travel, nor shall a center left-turn lane be used for passing or overtaking, except as a part of the left-turn maneuver.

(c) It is permissible for a vehicle making a left-hand turn from an intersecting street or driveway to utilize a center left-turn lane as part of the maneuver to gain access to or to merge into the traffic lanes, except that it is not permissible to use the center left-turn lane as an acceleration lane.

**History.** Acts 2001, No. 553, § 1.

**27-51-310. Passing emergency response vehicle or law enforcement vehicle stopped on highway.**

(a)(1) If an authorized emergency response vehicle or a law enforcement vehicle is parked or stopped at the scene of an emergency or other traffic stop and is displaying a flashing, revolving, or rotating blue, red, or amber and red light, an approaching motor vehicle operator shall move when possible into the farthest lane from the emergency response vehicle or law enforcement vehicle and remain in that lane until past the emergency response vehicle or law enforcement vehicle and any other vehicle involved in the emergency or other traffic stop.

(2) If changing lanes is not possible or is determined to be unsafe, an approaching motor vehicle operator shall reduce the motor vehicle’s speed, proceed with caution, and maintain a reduced speed appropriate to the road and the conditions through the area where the authorized emergency response vehicle or law enforcement vehicle is stopped.

(b)(1)(A) Any party who pleads guilty or nolo contendere to or is found guilty of violating this section shall be guilty of a misdemeanor and shall be fined not less than thirty-five dollars (\$35.00) nor more than five hundred dollars (\$500), confined in the county jail not to exceed ninety (90) days, or both fined and imprisoned.

(B) In addition to the penalties prescribed in subdivision (b)(1)(A) of this section, the court may order community service for not more than seven (7) days and may suspend the person’s driver’s license for a period of not less than ninety (90) days nor more than six (6) months.

(2) There is created a rebuttable presumption that shall arise in any criminal action under this section to the effect that if it can be proven that a person is the registered owner of a vehicle that is driven in a manner that violates this section, the person is presumed to have been the driver of the vehicle at the time of the violation.

**History.** Acts 2003, No. 1102, § 1; 2007, No. 1412, § 1; 2009, No. 483, § 5. The 2009 amendment inserted “emergency or other traffic” following “involved in the” in (a)(1).  
**Amendments.** The 2007 amendment rewrote the section heading, and rewrote (a).

**27-51-311. Overtaking a bicycle.**

- (a) The driver of a motor vehicle overtaking a bicycle proceeding in the same direction on a roadway shall exercise due care and pass to the left at a safe distance of not less than three feet (3') and shall not again drive to the right side of the roadway until safely clear of the overtaken bicycle.
- (b)(1) A person who violates this section shall be subject to a fine not to exceed one hundred dollars (\$100).
- (2) A person who violates this section with the violation resulting in a collision causing death or serious physical injury to the person operating the overtaken bicycle shall be subject to a fine not to exceed one thousand dollars (\$1,000) in addition to any other penalties prescribed by law.

**History.** Acts 2007, No. 681, § 1.

**SUBCHAPTER 4 — TURNING, STOPPING, AND SIGNALING**

SECTION.	SECTION.
27-51-401. Turning at intersections.	27-51-404. Signals to stop or turn.
27-51-402. Turning on curve or crest of grade prohibited.	27-51-405. Hand and arm signals.
27-51-403. Signals for turning, stopping, changing lanes, or decreasing speed required.	

**Effective Dates.** Acts 1937, No. 300, § 165: Mar. 23, 1937. Emergency clause provided: “It is hereby ascertained and determined by the General Assembly that the proper regulation of traffic on the highways is a necessary function of the State Government, and that the loss of life and property under the present laws creates an emergency. Therefore, this act being necessary for the immediate preservation of the public peace, health and safety, shall go into effect immediately upon its passage and approval.”

**RESEARCH REFERENCES**

**Am. Jur.** 7A Am. Jur. 2d, Auto., § 256-259, 268-270. **C.J.S.** 60A C.J.S., Motor Veh., § 300 et seq.

**27-51-401. Turning at intersections.**

The driver of a vehicle intending to turn at an intersection shall do so as follows:



(1) Both the approach for a right turn and a right turn shall be made as close as practical to the right-hand curb or edge of the roadway;

(2) The approach for a left turn shall be made in that portion of the right half of the roadway nearest the center line of the road. After entering the intersection, the left turn shall be made so as to leave the intersection to the right of the center line of the roadway being entered; and

(3)(A) The approach for a left turn from a two-way street into a one-way street shall be made in that portion of the right one-half ( $\frac{1}{2}$ ) of the roadway nearest the center line and by passing to the right of the center line where it enters the intersection.

(B) A left turn from a one-way street into a two-way street shall be made by passing to the right of the center line of the street being entered upon leaving the intersection.

**History.** Acts 1937, No. 300, § 64;  
Pope's Dig., § 6722; A.S.A. 1947, § 75-615.

## CASE NOTES

### ANALYSIS

Jury Questions.  
Negligence.  
Ordinances.

#### Jury Questions.

In a damage action growing out of a collision resulting when an automobile in the second lane from the curb attempted a right turn into a driveway and another behind it attempted to move into the curb lane preparatory to making a right turn at the intersection ahead, whether or not the driver of the rear car started her approach for a right turn too soon was a question for the jury. *Moore v. Cook*, 243 Ark. 502, 420 S.W.2d 905 (1967).

#### Negligence.

Where automobile stopped near the center of four-lane road at intersection with through highway and truck intending to turn right on highway pulled to the right of automobile near the edge of the road, and automobile, though its driver's view was obstructed by truck, drove across and was struck by another automobile traveling on through highway which had the right-of-way, driver of truck was not guilty of any negligence. *Ozark Natural Gas Co.*

*v. Moore*, 201 Ark. 283, 144 S.W.2d 35 (1940).

Where defendant was driving in excess of the speed limit and plaintiff driving in front approached intersection at which he intended to turn left and after giving a proper signal yielded the right-of-way to approaching vehicles before turning left but the defendant in the following vehicle not being able to stop swerved into the other lane of traffic and struck plaintiff after he had almost completed his left turn, plaintiff was not guilty of contributory negligence and the negligence of the defendant was the proximate cause of the collision. *Dearing v. Ferrell*, 165 F. Supp. 508 (W.D. Ark. 1958).

#### Ordinances.

Section of city ordinance requiring vehicles approaching intersections to run beyond center of intersection before turning to the left and giving vehicle continuing on street in original direction right-of-way over vehicle approaching in opposite direction turning off was not inadmissible in evidence as in conflict with this section in action for injuries sustained in a collision between automobile making left turn and bus. *Shipp v. Missouri Pac. Transp. Co.*, 197 Ark. 104, 122 S.W.2d 593 (1938).

**27-51-402. Turning on curve or crest of grade prohibited.**

No vehicle shall be turned so as to proceed in the opposite direction upon any curve or upon the approach to or near the crest of a grade where the vehicle cannot be seen by the driver of any other vehicle approaching from either direction within five hundred feet (500').

**History.** Acts 1937, No. 300, § 65; Pope's Dig., § 6723; A.S.A. 1947, § 75-616.

**27-51-403. Signals for turning, stopping, changing lanes, or decreasing speed required.**

(a) No person shall turn a vehicle from a direct course upon a highway unless and until the movement can be made with reasonable safety and then only after giving a clearly audible signal by sounding the horn if any pedestrian may be affected by the movement or after giving an appropriate signal in the manner provided in subsection (b) of this section in the event any other vehicle may be affected by the movement.

(b) A signal of intention to change lanes or to turn right or left shall be given continuously during not less than the last one hundred feet (100') traveled by the vehicle before changing lanes or turning.

(c) No person shall stop or suddenly decrease the speed of a vehicle without first giving an appropriate signal in the manner provided in this subchapter to the driver of any vehicle immediately to the rear when there is opportunity to give such signal.

**History.** Acts 1937, No. 300, § 67; Pope's Dig., § 6725; A.S.A. 1947, § 75-618; Acts 2007, No. 364, § 1.

**Amendments.** The 2007 amendment added "changing lanes" and made a minor

punctuation change in the section heading; and in (b), inserted "change lanes or to" preceding "turn" and inserted "changing lanes or" preceding "turning."

**CASE NOTES****ANALYSIS**

Contributory Negligence.  
Evidence of Negligence.  
Instructions.  
Jury Questions.  
Ordinary Care.  
Recovery Precluded.  
Sufficiency of Evidence.

**Contributory Negligence.**

The law of the road is that the automobile in front has the superior right to the use of the highway for the purpose of leaving it on either side, and a driver in the rear who fails to observe such rule, although driver in front failed to give

signal, is guilty of contributory negligence. *Jones v. King*, 211 Ark. 1084, 204 S.W.2d 548 (1947).

**Evidence of Negligence.**

It is the duty of one driving a car, where there is another car following close behind him, to warn the approaching car of his intention to stop, and the sudden stopping without any notice to the driver of the car immediately behind is, if unexplained, negligence. *Missouri Pac. Transp. Co. v. Sacker*, 200 Ark. 92, 138 S.W.2d 371 (1940).

A violation of this section, while not conclusive of the issue, may be evidence of negligence on the part of the violator.



Kisor v. Tulsa Rendering Co., 113 F. Supp. 10 (W.D. Ark. 1953).

It is the duty of a motorist if he knows, or by the exercise of ordinary care can know, that another car is close behind him to warn the approaching car by some appropriate signal or gesture of his intention to stop his car, and the sudden stopping of a car without any notice to the driver of the car immediately behind, if unexplained, is negligence. Waycaster v. Sorenson, 124 F. Supp. 892 (W.D. Ark. 1954).

A violation of the requirements of this section is evidence of negligence. Reppeto v. Raymond, 172 F. Supp. 786 (W.D. Ark. 1959).

Violation of this section is only evidence of negligence, not negligence per se. Downs v. Reed, 247 Ark. 588, 446 S.W.2d 657 (1969).

### Instructions.

In an action for death resulting from a collision of an automobile driven by the deceased with the defendant's truck, which made an abrupt left-hand turn without warning as the deceased's automobile was passing, an instruction that the driver of a vehicle should see that a turn could be made in safety and should give a signal visible to the driver of the other vehicle of his intent to make a turn was not erroneous as making the defendants insurers of the deceased's safety. Southwestern Bell Tel. Co. v. Balesh, 189 Ark. 1085, 76 S.W.2d 291 (1934) (decision under prior law).

There is no conflict between an instruction embodying this section and other sections concerning the manner of turning and changing lanes and the giving of signals in doing so and another instruction that instructs the jury that of two vehicles traveling in the same direction the one in front has the superior right to the use of the highway for the purpose of leaving it to enter intersecting roads or passageways. Wasson v. Warren, 245 Ark. 719, 434 S.W.2d 51 (1968).

Where the question of whether the deceased provided a proper turn signal was important in deciding the issue of defendants' negligence, repetition of the traffic rule in many contexts would not seem to be improper, and even though it would have been better had the judge not repeated the portion of his "rules-of-the-

road" charge, the partial repetition of a few lines of a jury charge, which, in total, ran in excess of 30 pages of transcript, did not seem misleading nor did the record reflect undue emphasis. Dobson v. Bacon Transp. Co., 607 F.2d 805 (8th Cir. 1979).

### Jury Questions.

Where the evidence is conflicting as to whether a person in a forward car gave the statutory left-hand turn signal, his alleged negligence is a question for the jury. Madison-Smith Cadillac Co. v. Lloyd, 184 Ark. 542, 43 S.W.2d 729 (1931).

Where truck driver testified that he took foot off accelerator and pushed in the clutch, thereby slowing down, but did not step on the brake and therefore did not light stop light, rather giving hand signals, and driver in rear testified that no signals were given and if signals had been given he could have stopped, evidence was sufficient to justify submission to the jury of question as to whether or not driver of truck stopped suddenly without giving the statutory signal to the driver of the vehicle immediately to his rear. A.S. Barboro & Co. v. James, 205 Ark. 53, 168 S.W.2d 202 (1943).

Where truck driver drove too close to a truck going the same direction and was unable to stop or prevent a collision when the front truck driver turned right without giving signal, the question of whether the negligence of the rear truck driver was the proximate cause of the collision was a question for the jury. Jones v. King, 211 Ark. 1084, 204 S.W.2d 548 (1947).

Where evidence indicating defendant's truck driver did not signal before turning left and into plaintiff's passing car was strongly denied by defendants, this was sufficient evidence to take the case to the jury under this section. Barr v. Matlock, 222 Ark. 260, 258 S.W.2d 540 (1953).

Where the plaintiff testified that she had stopped her car on the highway because of a skidding car out of control ahead of her and that she had been stopped only a few seconds when her car was struck from behind by the defendant's car, subsection (c) of this section could properly be considered by the jury in weighing the evidence, even though the defendant testified that he first observed the plaintiff's car stopped in his lane of traffic about 100 feet ahead of him but he did not apply his brakes until he was



about six feet from it. *Toney v. Miller*, 268 Ark. 795, 597 S.W.2d 102 (Ct. App. 1980), overruled, *Eisner v. Fields*, 67 Ark. App. 238, 998 S.W.2d 421 (1999).

### **Ordinary Care.**

Where driver of lead car suddenly saw a truck parked on shoulder extending partly onto the paved portion of her side of highway and oncoming traffic in other lane, began reducing speed of her car without looking in rear vision mirror to ascertain whether a vehicle was behind her, and did not give hand or arm signal to following car when obviously the reason for her failures was lack of time, the driver exercised ordinary care and under the conditions then existing was not guilty of contributory negligence in resulting accident. *Waycaster v. Sorenson*, 124 F. Supp. 892 (W.D. Ark. 1954).

Where motorist reduced speed of her vehicle so as to permit vehicle in front of her to make left turn, and gave appropriate signal of her action as required by subsection (c) of this section, driver of vehicle overtaking motorist owes her the duty to use ordinary care to respect her signal and avoid colliding with her. *Beaty v. Buckeye Fabric Finishing Co.*, 179 F. Supp. 688 (E.D. Ark. 1959).

### **Recovery Precluded.**

Plaintiff's negligence in making a left turn in the path of the overtaking vehicle precluded him from recovery. *Talley v. Morphis*, 232 Ark. 91, 334 S.W.2d 652 (1960).

### **Sufficiency of Evidence.**

The evidence warranted the jury in finding that the vehicle in which plaintiff was riding was immediately to the rear of defendant's truck at the time defendant's was stopped or suddenly slowed, thus requiring the driver of defendant's truck to give an appropriate signal of his intention to stop. *Jones Truck Lines v. Argo*, 237 F.2d 649 (8th Cir. 1956).

Where defendant driving truck towing second truck being steered by second defendant was proceeding north on highway and attempted to make left turn causing third defendant who was proceeding south on the highway to pull toward his left to avoid colliding with trucks and in so doing colliding with plaintiff's automobile, there was sufficient evidence to show that defendant steering towed vehicle was negligent in failing to give left turn signal, which negligence was the proximate cause of the accident. *Pilgrim v. Joyner*, 234 Ark. 945, 355 S.W.2d 616 (1962).

The evidence that a person negligently crossed the center line of highway in making a left-hand turn near the crest of a hill without giving any signal, when her view of approaching traffic was unobstructed for three-fourths of a mile and that of a driver approaching from the opposite direction was limited to approximately 100 feet, was sufficient to support the finding that she was 60% negligent and the other driver 40%. *Hicks v. Hall*, 253 Ark. 103, 484 S.W.2d 696 (1972).

**Cited:** *Butler v. Dowdy*, 304 Ark. 481, 803 S.W.2d 534 (1991).

## **27-51-404. Signals to stop or turn.**

(a) Any stop or turn signal when required in this subchapter shall be given either by means of the hand and arm or by signal lamps, except as otherwise provided in subsection (b) of this section.

(b) Any motor vehicle in use on a highway shall be equipped with, and the required signal shall be given by, signal lamps when the distance from the center of the top of the steering post to the left outside limit of the body, cab, or load of the motor vehicle exceeds twenty-four inches (24") or when the distance from the center of the top of the steering post to the rear limit of the body or load exceeds fourteen feet (14'). The latter measurement shall apply to any single vehicle and also to any combination of vehicles.

**History.** Acts 1937, No. 300, § 68; Pope's Dig., § 6726; Acts 1957, No. 216, § 1; A.S.A. 1947, § 75-619.

## CASE NOTES

### ANALYSIS

Constitutionality.

Instructions.

Jury Questions.

Proximate Cause.

Sufficiency of Evidence.

#### Constitutionality.

Former Acts 1951, No. 151, which purported to amend this section and which required vehicles of a certain construction and load to have signal devices but which exempted certain vehicles including "small farm vehicles" from its provisions, was unconstitutional and void. *State v. Bryant*, 219 Ark. 313, 241 S.W.2d 473 (1951).

#### Instructions.

Where an instruction to a jury embodying this section and also part of an unconstitutional act was favorable to defendants, the defendants could not complain of the instruction, since it was more favorable to them and was justified. *Barr v. Matlock*, 222 Ark. 260, 258 S.W.2d 540 (1953).

There is no conflict between an instruction embodying this section and other sections concerning the manner of turning and changing lanes and the giving of signals in doing so and another instruction that instructs the jury that of two vehicles traveling in the same direction the one in front has the superior right to the use of the highway for the purpose of leaving it to enter intersecting roads or passageways. *Wasson v. Warren*, 245 Ark. 719, 434 S.W.2d 51 (1968).

#### Jury Questions.

Where truck driver testified that he took foot off accelerator and pushed in the

clutch, thereby slowing down, but did not step on the brake and therefore did not light stop light, rather giving hand signals, and driver in rear testified that no signals were given and if signals had been given he could have stopped, evidence was sufficient to justify submission to the jury of question as to whether or not driver of truck stopped suddenly without giving the statutory signal to the driver of the vehicle immediately to his rear. *A.S. Barboro & Co. v. James*, 205 Ark. 53, 168 S.W.2d 202 (1943).

#### Proximate Cause.

Where defendant was driving in excess of the speed limit and plaintiff driving in front approached intersection at which he intended to turn left and after giving a proper signal yielded the right-of-way to approaching vehicles before turning left, but the defendant in the following vehicle not being able to stop swerved into the other lane of traffic and struck plaintiff after he had almost completed his left turn, plaintiff was not guilty of contributory negligence and the negligence of the defendant was the proximate cause of the collision. *Dearing v. Ferrell*, 165 F. Supp. 508 (W.D. Ark. 1958).

#### Sufficiency of Evidence.

The evidence that a person negligently crossed the center line of highway in making a left-hand turn near the crest of a hill without giving any signal, when her view of approaching traffic was unobstructed for three-fourths of a mile and that of a driver approaching from the opposite direction was limited to approximately 100 feet, was sufficient to support the finding that she was 60% negligent and the other driver 40%. *Hicks v. Hall*, 253 Ark. 103, 484 S.W.2d 696 (1972).

## 27-51-405. Hand and arm signals.

All signals required in this subchapter to be given by hand and arm shall be given from the left side of the vehicle in the following manner and these signals shall be indicated as follows:

- (1) Left turn — Hand and arm extended horizontally;

- (2) Right turn — Hand and arm extended upward; and
- (3) Stop or decrease of speed — Hand and arm extended downward.

**History.** Acts 1937, No. 300, § 69; Pope's Dig., § 6727; A.S.A. 1947, § 75-620.

SUBCHAPTER 5 — INTERSECTIONS

SECTION.	SECTION.
27-51-501. Vehicles approaching or entering intersection.	27-51-503. Vehicle or streetcar entering stop or yield intersection.
27-51-502. Vehicle turning left at intersection.	

**Effective Dates.** Acts 1937, No. 300, § 165: Mar. 23, 1937. Emergency clause provided: "It is hereby ascertained and determined by the General Assembly that the proper regulation of traffic on the highways is a necessary function of the State Government, and that the loss of life

and property under the present laws creates an emergency. Therefore, this act being necessary for the immediate preservation of the public peace, health and safety, shall go into effect immediately upon its passage and approval."

RESEARCH REFERENCES

**Ark. L. Rev.** Torts — Negligence — Crossing of Intersections, 7 Ark. L. Rev. 413.

**C.J.S.** 60A C.J.S., Motor Veh., § 350(1) et seq.

27-51-501. Vehicles approaching or entering intersection.

- (a) The driver of a vehicle approaching an intersection shall yield the right-of-way to a vehicle which has entered the intersection from a different highway.
- (b) When two (2) vehicles enter an intersection from different highways at the same time, the driver of the vehicle on the left shall yield the right-of-way to the vehicle on the right.
- (c) The foregoing rules are modified at through highways and otherwise as stated in this subchapter.

**History.** Acts 1937, No. 300, § 70; Pope's Dig., § 6728; A.S.A. 1947, § 75-621.

CASE NOTES

**Negligence.**  
Motorist who approached intersection at from 30 to 35 miles per hour and drove into the intersection in front of a car on his

right without slowing speed or attempting to stop was guilty of negligence precluding recovery. Connor v. Coughlin, 192 Ark. 528, 92 S.W.2d 380 (1936).



**Cited:** *Glover v. Dixon*, 285 Ark. 140, 688 S.W.2d 930 (1985).

### **27-51-502. Vehicle turning left at intersection.**

The driver of a vehicle within an intersection intending to turn to the left shall yield the right-of-way to all vehicles approaching from the opposite direction which are within the intersection or so close thereto as to constitute an immediate hazard. The driver, after having so yielded and having given a signal when and as required by this chapter, may make the left turn after all other vehicles approaching the intersection which constitute an immediate hazard shall have cleared the intersection.

**History.** Acts 1937, No. 300, § 71; Pope's Dig., § 6729; Acts 1975, No. 626, § 1; A.S.A. 1947, § 75-622.

### **CASE NOTES**

#### **ANALYSIS**

Jury Instructions.  
Ordinances.  
Proximate Cause.

#### **Jury Instructions.**

AMI Civil 3d, § 903, incorporates this section. *Druckenmiller v. Cluff*, 316 Ark. 517, 873 S.W.2d 526 (1994).

#### **Ordinances.**

Sections of city ordinance requiring vehicles approaching intersections to run beyond center of intersection before turning to the left and giving vehicle continuing on street in original direction right-of-way over vehicle approaching in opposite direction turning off was not inadmissible in evidence as in conflict with this section in action for injuries sustained in a colli-

sion between automobile making left turn and bus. *Shipp v. Missouri Pac. Transp. Co.*, 197 Ark. 104, 122 S.W.2d 593 (1938).

#### **Proximate Cause.**

Where defendant was driving in excess of the speed limit and plaintiff driving in front approached intersection at which he intended to turn left and after giving a proper signal yielded the right-of-way to approaching vehicles before turning left, but the defendant in the following vehicle not being able to stop swerved into the other lane of traffic and struck plaintiff after he had almost completed his left turn, plaintiff was not guilty of contributory negligence and the negligence of the defendant was the proximate cause of the collision. *Dearing v. Ferrell*, 165 F. Supp. 508 (W.D. Ark. 1958).

### **27-51-503. Vehicle or streetcar entering stop or yield intersection.**

(a) Preferential right-of-way at an intersection may be indicated by stop signs or yield signs as authorized by law.

(b) Except when directed to proceed by a police officer or traffic control signal, every driver of a vehicle and every operator of a streetcar approaching a stop intersection indicated by a stop sign shall stop as required by § 27-51-601, and after having stopped, shall yield the right-of-way to any vehicle which has entered the intersection from another highway or which is approaching so closely on the highway as to constitute an immediate hazard. The driver having so yielded may

proceed, and the drivers of all other vehicles approaching the intersection shall yield the right-of-way to the vehicle so proceeding.

(c)(1) The driver of a vehicle or the operator of a streetcar approaching a yield sign shall, in obedience to such sign, slow down to a speed reasonable for the existing conditions, or shall stop if necessary as provided in § 27-51-601, and shall yield the right-of-way to any pedestrian legally crossing the roadway on which he or she is driving. The driver shall also yield to any vehicle in the intersection or approaching on another highway so closely as to constitute an immediate hazard. A driver having so yielded may proceed, and the drivers of all other vehicles approaching the intersection shall yield to the vehicle so proceeding.

(2) If a driver is involved in a collision with a pedestrian in a crosswalk or a vehicle in the intersection after driving past a yield sign without stopping, the collision shall be deemed prima facie evidence of his or her failure to yield right-of-way.

**History.** Acts 1937, No. 300, § 72; Pope's Dig., § 6730; Acts 1959, No. 307, § 27; A.S.A. 1947, § 75-623.

**Cross References.** Penalty for violation of 1959 amendatory act, § 27-50-305.

## RESEARCH REFERENCES

**ALR.** *Res ipsa loquitur* as applied to accident resulting from wheel or part thereof becoming detached from motor vehicle. 79 A.L.R.3d 346.

## CASE NOTES

### ANALYSIS

Evidence of Negligence.

Instructions.

Right-of-Way.

Through Highways.

### Evidence of Negligence.

Where automobile stopped near the center of four-lane road at intersection with through highway and truck intending to turn right on highway pulled to the right of automobile near the edge of the road and automobile, though its driver's view was obstructed by truck, drove across and was struck by another automobile traveling on through highway which had the right-of-way, driver of truck was not guilty of any negligence; rather, automobile driver was guilty of negligence in violation of this section. *Ozark Natural Gas Co. v. Moore*, 201 Ark. 283, 144 S.W.2d 35 (1940).

Violation of subsection (b) of this section does not constitute negligence but is only evidence of negligence to be considered by

the jury. *Bridgforth v. Vandiver*, 225 Ark. 702, 284 S.W.2d 623 (1955).

### Instructions.

Where instruction does not contain the exact language of this section, but the meaning is essentially the same and the obvious purpose of both the statute and the instruction is to help the less-favored driver to get completely across the intersection without having a wreck, it is not error for trial court to give the instruction. *Lawson v. Stephens*, 241 Ark. 407, 407 S.W.2d 917 (1966).

Where defendant objected to instruction pertaining to drivers approaching stop sign at intersection and cited statute had been superseded and did not pertain to stop sign situation, objections could not be sustained. *Lawson v. Stephens*, 241 Ark. 407, 407 S.W.2d 917 (1966).

Where court refused to give instruction which, in essence, would have put a duty on the favored driver on the through highway to keep a lookout and not to assume due care on the part of the unfavored

driver and jury was charged to the same effect in two other instructions, the instruction was superfluous and the refusal was not error. *Lawson v. Stephens*, 241 Ark. 407, 407 S.W.2d 917 (1966).

#### **Right-of-Way.**

Person entering intersection first without any negligence is entitled to right-of-way. *Menser v. Danner*, 219 Ark. 130, 240 S.W.2d 652 (1951).

#### **Through Highways.**

In order to have a through highway at any particular intersection, there must be erected a stop sign at the entrance of the intersection on the highway approaching the through highway. *Watkins v. Bright*, 225 Ark. 879, 286 S.W.2d 333 (1956).

**Cited:** *Sander v. Kristof*, 349 F. Supp. 103 (W.D. Ark. 1972); *Lambert v. Markley*, 255 Ark. 851, 503 S.W.2d 162 (1973).

### **SUBCHAPTER 6 — STOPS AND YIELDING**

#### **SECTION.**

27-51-601. Stop signs and yield signs.

27-51-602. Stop before driving across sidewalk.

#### **SECTION.**

27-51-603. Yield on entering highway from private road.

27-51-604. Additional penalties.

**Cross References.** Military forces, right-of-way, § 12-62-409.

**Effective Dates.** Acts 1937, No. 300, § 165; Mar. 23, 1937. Emergency clause provided: "It is hereby ascertained and determined by the General Assembly that the proper regulation of traffic on the highways is a necessary function of the

State Government, and that the loss of life and property under the present laws creates an emergency. Therefore, this act being necessary for the immediate preservation of the public peace, health and safety, shall go into effect immediately upon its passage and approval."

### **RESEARCH REFERENCES**

**Am. Jur.** 7A Am. Jur. 2d, Auto., §§ 236-255, §§ 268-270.

**C.J.S.** 60A C.J.S., Motor Veh., § 274 et seq.

#### **27-51-601. Stop signs and yield signs.**

(a) Preferential right-of-way at an intersection may be indicated by stop signs or yield signs as authorized by law.

(b) Every stop sign and every yield sign shall be erected as near as practicable to the nearest line of the crosswalk on the near side of the intersection or, if there is no crosswalk, then as near as practicable to the nearest line of the intersection roadway.

(c)(1) Every stop sign shall bear the word "STOP" in letters not less than eight inches (8") in height.

(2) Every yield sign shall bear the word "YIELD" in letters not less than seven inches (7") in height.

(3) Every stop sign and every yield sign shall at nighttime be rendered luminous by internal illumination or by a floodlight projected on the face of the sign or by efficient reflecting elements in the face of the sign.



(d) Except when directed to proceed by a police officer or traffic control signal, every driver of a vehicle and every operator of a streetcar approaching a stop intersection indicated by a stop sign shall stop before entering the crosswalk on the near side of the intersection. In the event there is no crosswalk, the driver or operator shall stop at a clearly marked stop line, but if none, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering the intersection.

(e) The driver of a vehicle approaching a yield sign, if required for safety to stop, shall stop before entering the crosswalk on the near side of the intersection. In the event there is no crosswalk, the driver shall stop at a clearly marked stop line, but if none, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway.

**History.** Acts 1937, No. 300, § 88; Pope's Dig., § 6745; Acts 1959, No. 307, § 31; A.S.A. 1947, § 75-645. **Cross References.** Penalty for violation of 1959 amendatory act, § 27-50-305.

#### CASE NOTES

##### **Through Highways.**

In order to have a through highway at any particular intersection, there must be erected a stop sign at the entrance of the intersection on the highway approaching

the through highway. *Watkins v. Bright*, 225 Ark. 879, 286 S.W.2d 333 (1956).

**Cited:** *Ferrell v. Whittington*, 271 Ark. 750, 610 S.W.2d 572 (1981).

#### **27-51-602. Stop before driving across sidewalk.**

When in a business or residential district and emerging from an alley, driveway, or building, the driver of a vehicle shall stop the vehicle immediately prior to driving onto a sidewalk or into the sidewalk area extending across any alleyway or private driveway.

**History.** Acts 1937, No. 300, § 89; Pope's Dig., § 6746; A.S.A. 1947, § 75-646.

#### **27-51-603. Yield on entering highway from private road.**

The driver of a vehicle about to enter or cross a highway from a private road or driveway shall yield the right-of-way to all vehicles approaching on the highway.

**History.** Acts 1937, No. 300, § 73; Pope's Dig., § 6731; A.S.A. 1947, § 75-624.

## CASE NOTES

## ANALYSIS

Duty to Lookout.

Instructions.

Negligence.

No Recovery.

**Duty to Lookout.**

Driver of truck about to enter highway from private driveway was under a duty to keep a proper lookout. *Easley v. Inglis*, 233 Ark. 589, 346 S.W.2d 206 (1961).

**Instructions.**

An instruction that the mere happening of an accident is not of itself evidence of negligence, even though there was uncontradicted proof that defendant had been negligent by failing to yield the right-of-way while pulling his vehicle from a private driveway into a public street, was not erroneous. *Helton v. Missouri Pac. R.R.*, 260 Ark. 342, 538 S.W.2d 569 (1976).

Trial court should not have instructed the jury on comparative fault under § 16-64-122 in appellant's action for damages resulting from a car accident because appellee was required to yield the right of way under this section and appellant did not have a duty to anticipate his failure to

yield. The fact that appellant allegedly admitted fault by stating that she was looking for a parking spot was irrelevant as she had no duty; rather it was appellee's duty to avoid the accident resulting from appellant hit appellee's car as he was backing out of a driveway onto the highway on which appellant was traveling. *Bell v. Misenheimer*, 102 Ark. App. 389, 285 S.W.3d 693 (2008), rev'd, 2009 Ark. 222, 308 S.W.3d 120 (2009).

**Negligence.**

A driver who enters a highway without first keeping a proper lookout for vehicles that might be traveling thereon is guilty of negligence. *Sunday v. Burk*, 172 F. Supp. 722 (W.D. Ark. 1959).

Driver guilty of negligence in entering upon highway from a private road without keeping a proper lookout for vehicle approaching on highway. *Kelly v. United States*, 230 F. Supp. 118 (W.D. Ark. 1964).

**No Recovery.**

Where trial judge heard parties testify and reached the conclusion that the contributory negligence of the parties was equal, neither party could recover against the other. *Easley v. Inglis*, 233 Ark. 589, 346 S.W.2d 206 (1961).

**27-51-604. Additional penalties.**

(a) The penalties under this section may be in addition to the penalties provided under § 27-50-301 et seq. and the Arkansas Criminal Code, § 5-1-101 et seq.

(b) A person who is found guilty of, pleads guilty to, or pleads nolo contendere to a violation under this subchapter where the violation resulted in the injury of another person may be fined two hundred dollars (\$200) and may have his or her driver's license, permit, or nonresident operating privilege suspended for a minimum of thirty (30) days.

(c) A person who is found guilty of, pleads guilty to, or pleads nolo contendere to a violation under this subchapter where the violation resulted in the serious bodily injury of another person may be fined five hundred dollars (\$500) and may have his or her driver's license, permit, or nonresident operating privilege suspended for a minimum of ninety (90) days.

(d) A person who is found guilty of, pleads guilty to, or pleads nolo contendere to a violation under this subchapter where the violation results in the death of another person may be fined one thousand dollars (\$1,000) and may have his or her driver's license, permit, or

nonresident operating privilege suspended for a minimum of one hundred eighty (180) days.

**History.** Acts 2005, No. 2143, § 1.

## SUBCHAPTER 7 — RAILROAD GRADE CROSSINGS

### SECTION.

27-51-701. Penalty generally.

27-51-702. Obedience to signals at crossings required.

27-51-703. Certain vehicles to stop at all crossings — Exceptions.

27-51-704. Trucks carrying explosives or flammable liquids.

### SECTION.

27-51-705. Moving heavy equipment at crossings.

27-51-706. Designation of particularly dangerous crossings.

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**Effective Dates.** Acts 1937, No. 300, § 165; Mar. 23, 1937. Emergency clause provided: "It is hereby ascertained and determined by the General Assembly that the proper regulation of traffic on the highways is a necessary function of the State Government, and that the loss of life and property under the present laws creates an emergency. Therefore, this act being necessary for the immediate preservation of the public peace, health and safety, shall go into effect immediately upon its passage and approval."

Acts 1963, No. 254, § 5; Mar. 18, 1963. Emergency clause provided: "It is hereby

found and determined by the General Assembly that many lives and considerable property damage results from persons failing to exercise due care at hazardous railroad crossings in this state, and that immediate steps should be taken to establish means of identifying such hazardous crossings, erect proper warning signs thereat and provide penalties for violation thereof. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

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### 27-51-701. Penalty generally.

Any person who violates any of the provisions of this subchapter shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than fifty dollars (\$50.00) and not more than two hundred dollars (\$200).

**History.** Acts 1951, No. 182, § 4; A.S.A. 1947, § 75-639.1.

### 27-51-702. Obedience to signals at crossings required.

(a) Whenever any person driving a vehicle approaches a railroad grade crossing under any of the circumstances stated in this section, then the driver of the vehicle shall stop within fifty feet (50') but not less than fifteen feet (15') from the nearest rail of such railroad and shall not proceed until he or she can do so safely. These requirements shall apply when:



(1) A clearly visible electric or mechanical signal device gives warning of the immediate approach of a railroad train;

(2) A crossing gate is lowered or a human flagger gives or continues to give a signal of the approach or passage of a railroad train;

(3) A railroad train approaching within approximately one thousand five hundred feet (1,500') of the highway crossing emits a signal audible from such distance and the railroad train, by reason of its speed or nearness to the crossing, is an immediate hazard; and

(4) An approaching railroad train is plainly visible and is in hazardous proximity to the crossing.

(b) No person shall drive any vehicle through, around, or under any crossing gate or barrier at a railroad crossing while the gate or barrier is closed or is being opened or closed.

**History.** Acts 1937, No. 300, § 84; Pope's Dig., § 6742; Acts 1951, No. 182, § 1; 1959, No. 307, § 28; A.S.A. 1947, § 75-637.

**Cross References.** Penalty for violation of 1959 amendatory act, § 27-50-305.

## CASE NOTES

### ANALYSIS

Duties of Drivers.

Evidence of Negligence.

Instructions.

### Duties of Drivers.

Where automatic blinker signals and bells are operating when vehicles approach a railroad crossing, it is the driver's duty to stop and not proceed until he can do so safely. *Missouri Pac. R.R. v. Yandell*, 209 Ark. 569, 191 S.W.2d 592 (1946).

The duty of train operators to give warning of their approach and to keep a lookout for vehicles is equal with the duty of vehicle operators to keep a lookout for trains upon approaching railroad tracks, which historically have been described by the courts as in themselves warnings of danger. *Overstreet v. Missouri Pac. R.R.*, 195 F. Supp. 542 (W.D. Ark. 1961).

The statutory duty to stop does not become applicable unless the railroad train emits an audible signal from a distance of not less than 1500 feet of the crossing or unless the train is plainly visible. *Scoville v. Missouri Pac. R.R.*, 458 F.2d 639 (8th Cir. 1972).

### Evidence of Negligence.

Plaintiff's contention that defendant was negligent in not having a flagman at a

crossing was rejected where there was nothing to show what more a "human flagman" could have done than was being done by the traffic control bells and by the flashing red signal lights with the admonition "Stop on Red Signal" in blazing color immediately under the lights. *Overstreet v. Missouri Pac. R.R.*, 195 F. Supp. 542 (W.D. Ark. 1961).

Plaintiff failed to establish negligence of railroad company where the testimony was undisputed that signal lights and signal bells were operating; where the testimony overwhelmingly established that the train whistle was sounding and that the train bell was continuously ringing; where no one testified that the train running at 22 miles per hour was traveling at an unusually high or excessive rate of speed; where there was nothing to prevent plaintiff and the driver of the automobile from seeing the signal lights in ample time for the car to have been stopped; where plaintiff testified that she was not looking at the signal lights; where the train engineer and fireman testified that they were keeping a proper lookout; where both plaintiff and the driver of the automobile were familiar with the crossing; where all other motor vehicle operators who testified stated that the approach of the train was very evident; and where, notwithstanding these facts, the driver of the automobile proceeded to the track.

Overstreet v. Missouri Pac. R.R., 195 F. Supp. 542 (W.D. Ark. 1961).

Evidence that railroad was negligent in failing to give statutory signal and maintaining an extra hazardous crossing, which caused train to collide with decedent's car, was sufficient for jury to have awarded damages for wrongful death. Scoville v. Missouri Pac. R.R., 458 F.2d 639 (8th Cir. 1972).

#### **Instructions.**

An instruction setting out a safety regulation of the Interstate Commerce Com-

mission was not prejudicial to the plaintiff in a railroad crossing accident case, since the duty imposed by that regulation upon plaintiff's decedent was less than that imposed by this section. Bussell v. Missouri Pac. R.R., 237 Ark. 812, 376 S.W.2d 545 (1964).

There was no error in refusing an instruction on this section where two other instructions adequately presented the theory on the issue of a motorist's duty to stop at a railroad crossing. Missouri Pac. R.R. v. Harelson, 238 Ark. 452, 382 S.W.2d 900 (1964).

### **27-51-703. Certain vehicles to stop at all crossings — Exceptions.**

(a) The driver of any motor vehicle carrying passengers for hire, any school bus carrying any school child, or any vehicle carrying explosive substances or flammable liquids as a cargo or part of a cargo before crossing at grade any tracks of a railroad shall stop the vehicle within fifty feet (50') but not less than fifteen feet (15') from the nearest rail of the railroad and, while so stopped, shall listen and look in both directions along the track for any approaching train and for signals indicating that approach of a train, except as provided, and shall not proceed until he or she can do so safely. After stopping as required in this section and upon proceeding when it is safe to do so, the driver of any such vehicle shall cross only in the gear of the vehicle in which there will be no necessity for changing gears while traversing the crossing and the driver shall not shift gears while crossing the tracks.

(b) No stop need be made at any such crossing where a police officer or a traffic control signal directs traffic to proceed.

(c) This section shall not apply at street railway grade crossings within a business or residential district.

**History.** Acts 1937, No. 300, § 86; Pope's Dig., § 6743; Acts 1951, No. 182, § 2; 1959, No. 307, § 29; A.S.A. 1947, § 75-638.

**Cross References.** Penalty for violation of 1959 amendatory act, § 27-50-305.

### **27-51-704. Trucks carrying explosives or flammable liquids.**

(a) The operator of any truck carrying any explosive substances or flammable liquids or gases as a cargo or part of a cargo shall, before crossing any railroad tracks, stop the vehicle within fifty feet (50') but not less than fifteen feet (15') from the nearest railroad and while stopped shall open the door of the truck on the driver's side or roll down the window at least twelve inches (12") in order to remove any obstruction of the sound of a train whistle. He or she shall also listen and look in both directions along the track for any approaching train or

signals indicating the approach of a train and shall proceed to cross the tracks only after he or she has determined that it is safe to do so.

(b)(1) Any operator of a truck who fails to comply with the provisions of this section shall be guilty of a misdemeanor.

(2)(A)(i) Upon a first conviction, the operator shall be fined not less than one hundred dollars (\$100) nor more than three hundred dollars (\$300).

(ii) In addition, the chauffeur's license of the operator shall be suspended for a period of thirty (30) days.

(B)(i) For a second offense, the operator shall be fined not less than one hundred dollars (\$100) nor more than three hundred dollars (\$300).

(ii) In addition, that person's chauffeur's license shall be suspended for a period of one (1) year.

**History.** Acts 1975, No. 878, §§ 1, 2;  
A.S.A. 1947, §§ 75-638.1, 75-638.2.

### **27-51-705. Moving heavy equipment at crossings.**

(a) No person shall operate or move any crawler-type tractor, steam shovel, derrick, roller, or any equipment or structure having a normal operating speed of up to ten miles per hour (10 m.p.h.) or a vertical body or load clearance of less than one-half inch ( $\frac{1}{2}$ " ) per foot of the distance between any two (2) adjacent axles or, in any event, of less than nine inches (9"), measured above the level surface of a roadway, upon or across any tracks at a railroad grade crossing without first complying with this section.

(b) Notice of any intended crossing shall be given to a station agent of the railroad, and a reasonable time shall be given to the railroad to provide proper protection at the crossing.

(c) Before making any crossing, the person operating or moving any such vehicle or equipment shall first stop it not less than fifteen feet (15') nor more than fifty feet (50') from the nearest rail of the railroad. While stopped that person shall listen and look in both directions along the tracks for any approaching train and for signals indicating the approach of a train and shall not proceed until the crossing can be made safely.

(d)(1) No crossing shall be made when warning is given by automatic signal or crossing gates or a flagger or otherwise of the immediate approach of a railroad train or car.

(2) If a flagger is provided by the railroad, movement over the crossing shall be under his or her direction.

**History.** Acts 1937, No. 300, § 87;  
Pope's Dig., § 6744; Acts 1951, No. 182,  
§ 3; 1959, No. 307, § 30; A.S.A. 1947,  
§ 75-639.

**Cross References.** Penalty for violation of 1959 amendatory act, § 27-50-305.



## CASE NOTES

**Equipment.**

A lowboy semitrailer comes within the definition of "any equipment" as used in

subsection (a) of this section. Saint Louis S.W. Ry. v. Pierce, 68 F.3d 276 (8th Cir. 1995).

**27-51-706. Designation of particularly dangerous crossings.**

(a) The State Highway Commission and local authorities, with the approval of the commission, are authorized to designate particularly dangerous state highway grade crossings of railroads and to erect stop signs there.

(b) When stop signs are erected, the driver of any vehicle shall stop within fifty feet (50') but not less than ten feet (10') from the nearest rail of the railroad and shall proceed only upon exercising due care.

(c) Any person, owner, or driver of any automobile, truck, motorcycle, or other motor-driven vehicle violating the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction shall be fined in any sum not less than five dollars (\$5.00) nor more than twenty-five dollars (\$25.00).

(d) This section shall be cumulative to the other laws of this state and shall not repeal any laws or parts of laws except where specifically in conflict with this section.

**History.** Acts 1963, No. 254, §§ 1-4;  
A.S.A. 1947, §§ 75-665 — 75-667,  
75-667n.

**SUBCHAPTER 8 — STREETCARS****SECTION.**

27-51-801. Passing streetcar on left.

27-51-802. Passing streetcar on right.

**SECTION.**

27-51-803. Driving on streetcar tracks.

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**Effective Dates.** Acts 1937, No. 300, § 165: Mar. 23, 1937. Emergency clause provided: "It is hereby ascertained and determined by the General Assembly that the proper regulation of traffic on the highways is a necessary function of the State Government, and that the loss of life

and property under the present laws creates an emergency. Therefore, this act being necessary for the immediate preservation of the public peace, health and safety, shall go into effect immediately upon its passage and approval."

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**27-51-801. Passing streetcar on left.**

(a) The driver of a vehicle shall not overtake and pass upon the left nor drive upon the left side of any streetcar proceeding in the same direction, whether the streetcar is actually in motion or temporarily at rest, except:

- (1) When so directed by a police officer;
- (2) When upon a one-way street; or
- (3) When upon a street where the tracks are so located as to prevent compliance with this section.

(b) The driver of any vehicle, when permitted to overtake and pass upon the left of a streetcar which has stopped for the purpose of receiving or discharging any passenger, shall reduce speed and may proceed only upon exercising due caution for pedestrians and shall accord pedestrians the right-of-way when required by other sections of this chapter.

**History.** Acts 1937, No. 300, § 80; Pope's Dig., § 6738; A.S.A. 1947, § 75-633.

### **27-51-802. Passing streetcar on right.**

The driver of a vehicle overtaking upon the right any streetcar stopped or about to stop for the purpose of receiving or discharging any passenger shall stop the vehicle at least five feet (5') to the rear of the nearest running board or door of the streetcar and thereupon remain standing until all passengers have boarded the car or, upon alighting, have reached a place of safety. However, where a safety zone has been established, a vehicle need not be brought to a stop before passing any streetcar but may proceed past such car at a speed not greater than is reasonable and proper and with due caution for the safety of pedestrians.

**History.** Acts 1937, No. 300, § 81; Pope's Dig., § 6739; A.S.A. 1947, § 75-634.

### **27-51-803. Driving on streetcar tracks.**

(a) The driver of any vehicle proceeding upon any streetcar track in front of a streetcar upon a street shall remove the vehicle from the track as soon as practical after signal from the operator of the streetcar.

(b) When a streetcar has started to cross an intersection, no driver of a vehicle shall drive upon or cross the car tracks within the intersection in front of the streetcar.

(c) The driver of a vehicle upon overtaking and passing a streetcar shall not turn in front of the streetcar so as to interfere with or impede its movement.

**History.** Acts 1937, No. 300, § 82; Pope's Dig., § 6740; A.S.A. 1947, § 75-635.

SUBCHAPTER 9 — EMERGENCY VEHICLES

SECTION.

27-51-901. Operation of vehicles and streetcars on approach of authorized emergency vehicles.

SECTION.

27-51-902. Following fire apparatus.  
27-51-903. Crossing unprotected fire hose prohibited.  
27-51-904. Towing operations.

**Effective Dates.** Acts 1937, No. 300, § 165: Mar. 23, 1937. Emergency clause provided: “It is hereby ascertained and determined by the General Assembly that the proper regulation of traffic on the highways is a necessary function of the State Government, and that the loss of life

and property under the present laws creates an emergency. Therefore, this act being necessary for the immediate preservation of the public peace, health and safety, shall go into effect immediately upon its passage and approval.”

RESEARCH REFERENCES

**Am. Jur.** 7A Am. Jur. 2d, Auto., §§ 244, 250.

**C.J.S.** 60A C.J.S., Motor Veh., § 371 et seq.

**27-51-901. Operation of vehicles and streetcars on approach of authorized emergency vehicles.**

(a)(1) Upon the immediate approach of an authorized emergency vehicle; when the driver is giving audible signal by siren, exhaust whistle, or bell, the driver of every other vehicle shall yield the right-of-way and shall immediately drive to a position parallel to and as close as possible to the right-hand edge or curb of the highway clear of any intersection and shall stop and remain in such position until the authorized emergency vehicle has passed, except when otherwise directed by a police officer.

(2) Upon conviction of violating subdivision (a)(1) of this section, a person is subject to a fine not to exceed four hundred dollars (\$400).

(b) Upon the approach of an authorized emergency vehicle, as stated in subsection (a) of this section, the operator of every streetcar shall immediately stop the car clear of any intersection and keep it in that position until the authorized emergency vehicle has passed, except when otherwise directed by a police officer.

(c) This section shall not operate to relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons using the highway.

**History.** Acts 1937, No. 300, § 74; Pope’s Dig., § 6732; A.S.A. 1947, § 75-625; Acts 2007, No. 338, § 1.

**Amendments.** The 2007 amendment added (a)(2) and made a related change.



## CASE NOTES

## ANALYSIS

Driver of Emergency Vehicle.  
Instructions.  
Police Motorcycles.

**Driver of Emergency Vehicle.**

The driver of an emergency vehicle is held to a standard of ordinary care. *City of Little Rock v. Weber*, 298 Ark. 382, 767 S.W.2d 529 (1989).

**Instructions.**

Where police officer was injured while operating a police motorcycle and brought an action to recover for personal injuries sustained, the submission to the jury of instructions with respect to law applicable to emergency vehicles, though the only signal being given was a blowing of a horn by the police officer, was prejudicial error, even though comparative negligence, on

which the court also submitted an instruction, was the basis of the jury verdict in the police officer's favor. *Whistle-Vess Bottling Co. v. Owens*, 249 Ark. 424, 459 S.W.2d 562 (1970).

**Police Motorcycles.**

A police motorcycle was not "authorized emergency vehicle" within the meaning of this section where the only signal being given by the police officer on the cycle was a blowing of the horn, regardless of fact that he was responding to another officer's call for assistance. *Whistle-Vess Bottling Co. v. Owens*, 249 Ark. 424, 459 S.W.2d 562 (1970).

**Cited:** *Gookin v. Locke*, 240 Ark. 1005, 405 S.W.2d 256 (1966); *Freeman v. Reeves*, 241 Ark. 867, 410 S.W.2d 740 (1967); *Sherman v. State*, 326 Ark. 153, 931 S.W.2d 417 (1996).

**27-51-902. Following fire apparatus.**

The driver of any vehicle other than one on official business shall not follow any fire apparatus traveling in response to a fire alarm closer than five hundred feet (500') or drive into or park the vehicle within the block where fire apparatus has stopped in answer to a fire alarm.

**History.** Acts 1937, No. 300, § 98;  
Pope's Dig., § 6755; A.S.A. 1947, § 75-655.

**27-51-903. Crossing unprotected fire hose prohibited.**

No streetcar or vehicle shall be driven over any unprotected hose of a fire department when laid down on any street, private driveway, or streetcar track to be used at any fire or alarm of fire without the consent of the fire department official in command.

**History.** Acts 1937, No. 300, § 99;  
Pope's Dig., § 6756; A.S.A. 1947, § 75-656.

**27-51-904. Towing operations.**

(a) As used in this section, "towing operation" means an activity on the highway or roadway that involves one (1) or more tow trucks at an accident scene or involves an inoperable vehicle.

(b) The driver of a motor vehicle that is approaching a towing operation on a highway or roadway shall:

- (1) Move when possible into the farthest lane or position from the towing operation;
  - (2) Remain in that lane or position until the driver passes the towing operation; and
  - (3) Otherwise exercise due caution.
- (c) A person who pleads guilty or nolo contendere to or is found guilty of violating this section is guilty of a violation.

**History.** Acts 2007, No. 626, § 1.

## SUBCHAPTER 10 — SCHOOL BUSES

### SECTION.

27-51-1001. Penalty.

27-51-1002. Specifications for identification and safety devices.

27-51-1003. Loading points.

### SECTION.

27-51-1004. Passing when stopped prohibited.

27-51-1005. Operation on multiple lane or divided highways.

**Cross References.** Use of officially designated school bus colors or words "school bus" unlawful, § 27-50-310.

**Effective Dates.** Acts 1973, No. 579, § 3: Apr. 3, 1973. Emergency clause provided: "It is hereby found and determined by the General Assembly that the requirements regarding the installation and operation, and other specifications for flasher lights on school buses prescribed in subsection (c) of Section 1 of Act 356 of 1953 are not appropriate with respect to all buses to which such requirements are applicable and that it is in the best interests of the State of Arkansas and the public schools of this State that the requirements for flasher lights on school buses be prescribed by regulation of the State Board of Education rather than by statutory law; and that this Act is immediately necessary to remove such statutory requirements and to specifically authorize the State Board of Education to prescribe the requirements for flasher lights on school buses. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1975, No. 255, § 4: Feb. 24, 1975. Emergency clause provided: "It is hereby found and determined by the General Assembly that the safety of thousands of school children who must ride buses to

school is largely dependent upon compliance with the law requiring motorists to come to a complete stop while school children are entering and leaving a school bus; and it is further found that the adequate enforcement of the school bus laws and the ability of motorists to comply with said laws is dependent upon school buses being adequately marked and displaying the necessary flasher lights and upon said lights being operated while loading or discharging school children; and it is further found that an amendment to subsection (c) of Section 1 of Act 356 of 1953 omitted the requirement that said lights be operating at all times while buses are loading or discharging school children, and that said requirement should be included in the law; and it is further found that the current minimum fine (\$10.00) for violation of any of the provisions of Act 356 of 1953, as amended, is less than most witnesses would lose in wages to appear in court and testify against a violator of said provisions, and that said minimum fine should be increased; and, that the immediate passage of this Act is necessary to encourage compliance with Act 356 of 1953, as amended, for the remainder of the current school year. Therefore, an emergency is hereby declared to exist, and this Act being immediately necessary for the preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

Acts 1989, No. 243, § 4: Feb. 24, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly that current wording in the law makes it unclear that vehicles encountering a school bus stopped at traffic control devices and not discharging or receiving passengers may proceed through the intersection; that as a result of this confu-

sion, enforcement of this provision has proven difficult; that literal enforcement of the current law would result in an absurdity; therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

### RESEARCH REFERENCES

**Am. Jur.** 7A Am. Jur. 2d, Auto., § 269.

**C.J.S.** 60A C.J.S., Motor Veh., § 396(3).

### 27-51-1001. Penalty.

(a)(1)(A)(i) Any party who violates any of the provisions of this subchapter shall upon conviction be guilty of a misdemeanor and shall be fined not less than two hundred fifty dollars (\$250) nor more than one thousand dollars (\$1,000) or confined in the county jail not to exceed ninety (90) days or both fined and imprisoned.

(ii) In addition to the penalties so prescribed, the court may order community service for not more than four hundred (400) hours and shall suspend the person's driver's license for a period of not less than twenty-one (21) days nor more than one (1) year.

(B) There is hereby created a rebuttable presumption that shall arise in any criminal action under this subchapter to the effect that if it can be proven that a person is the registered owner of a vehicle that is driven in a manner which violates the provisions of this subchapter, the person is presumed to have been the driver of the vehicle at the time of the violation.

(2) If death results to any person, caused either directly or indirectly by noncompliance with or violation of any of the provisions of this subchapter, the offending party shall be punished as is provided by law.

(b) In a proceeding for a violation of this subchapter, proof that the particular vehicle described in the citation, complaint, or warrant was in violation of this subchapter, together with proof that the defendant named in the citation, complaint, or warrant was at the time of the violation a registered owner of the vehicle, shall constitute in evidence a justifiable inference that the registered owner of the vehicle was the driver of the vehicle at the time of the violation.

**History.** Acts 1953, No. 356, § 4; 1975, No. 255, § 2; 1985, No. 1078, § 1; A.S.A. 1947, § 75-659; Acts 1999, No. 1516, § 1; 2005, No. 2128, § 3.

**A.C.R.C. Notes.** Acts 2005, No. 2128, § 1, provided: "This act shall be known and may be cited as 'Isaac's Law'."



**27-51-1002. Specifications for identification and safety devices.**

(a)(1) All vehicles used for the transportation of pupils to or from any school shall have a sign on the front and on the rear of the vehicle showing the words "SCHOOL BUS", and the words shall be plainly readable in letters not less than eight inches (8") in height.

(2) When a school bus is being operated upon a highway for purposes other than the actual transportation of children either to or from school, all markings thereon indicating "SCHOOL BUS" shall be covered or concealed.

(b) Every school bus shall be in the color officially designated by the State Board of Education.

(c)(1)(A) The board is vested with full authority and responsibility to prescribe by regulation the number and location and other specifications for alternating red warning lights on school buses operated in this state.

(B) Alternating red warning lights shall be operating at all times when the buses are loading or unloading school children but at no other time.

(2) It shall be the duty of the operator of every school bus operated in this state to conduct an inspection before each trip begins to see that all identification and safety devices required by this section or required by regulation of the board are displayed on the vehicle in the manner required, and it is unlawful for any person to operate a school bus in this state unless identification and safety devices are properly displayed and in proper working order.

**History.** Acts 1953, No. 356, § 1; 1957, No. 322, § 1; 1959, No. 307, § 32; 1965, No. 426, § 1; 1973, No. 579, § 1; 1975, No. 255, § 1; A.S.A. 1947, § 75-658; Acts 2005, No. 2128, § 4.

**A.C.R.C. Notes.** Acts 2005, No. 2128, § 1, provided: "This act shall be known and may be cited as 'Isaac's Law'."

**Cross References.** Penalty for violation of 1959 amendatory act, § 27-50-305.

**27-51-1003. Loading points.**

(a) School bus drivers shall stop school buses in the right-hand traffic lane at loading points where school children cross the highway in the process of loading or unloading and at loading points where the shoulder of the road is so narrow that pulling to the shoulder is unsafe or impractical.

(b) At loading points where no children cross the highway in the process of loading or unloading and where there is a sufficient and safe area at the right to remove the school bus completely from the highway, school bus drivers shall remove the school bus from the highway for loading or unloading.

**History.** Acts 1953, No. 356, § 3; 1965, No. 426, § 2; A.S.A. 1947, § 75-658.2.

**27-51-1004. Passing when stopped prohibited.**

(a) When a school bus stops and displays its alternating red warning lights for the purpose of loading or unloading passengers, every operator of a motor vehicle or motorcycle meeting or overtaking the school bus from any direction shall bring the motor vehicle or motorcycle to a complete stop before reaching the school bus.

(b) The operator of the motor vehicle or motorcycle shall not start up or attempt to pass in any direction until the school bus vehicle has finished receiving or discharging its passengers and is in motion again.

<p><b>History.</b> Acts 1953, No. 356, § 1; 1957, No. 322, § 1; 1985, No. 1083, § 1; A.S.A. 1947, § 75-658; Acts 1989, No. 243, § 1; 2005, No. 2128, § 5.</p>	<p><b>A.C.R.C. Notes.</b> Acts 2005, No. 2128, § 1, provided: "This act shall be known and may be cited as 'Isaac's Law'."</p>
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**27-51-1005. Operation on multiple lane or divided highways.**

(a) For the purpose of this section, "multiple lane highway" means a road with four (4) or more traffic lanes and with no fewer than two (2) traffic lanes for traveling in each direction.

(b) If the school bus is operated on a multiple lane highway divided by a parkway or dividing strip of twenty feet (20') or more in width and if the school bus is on the opposite side of the parkway or dividing strip, then the driver of the approaching vehicle need not stop but shall proceed with due caution for the safety of the children.

(c)(1) If a school bus route includes bus stops on a multiple lane highway, the route shall be designed to ensure that the bus operator shall always load and unload passengers in a manner that does not require a student to cross the highway.

(2) A student being loaded or unloaded at a bus stop on a multiple lane highway shall always be loaded and unloaded in a manner that does not require the student to cross the highway.

<p><b>History.</b> Acts 1953, No. 356, § 2; A.S.A. 1947, § 75-658.1; Acts 2005, No. 2128, § 6.</p>	<p><b>A.C.R.C. Notes.</b> Acts 2005, No. 2128, § 1, provided: "This act shall be known and may be cited as 'Isaac's Law'."</p>
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**SUBCHAPTER 11 — CHURCH BUSES**

SECTION.

27-51-1101. Definition.

27-51-1102. Penalty.

27-51-1103. Loading points.

SECTION.

27-51-1104. Passing stopped church bus prohibited — Exception.

**27-51-1101. Definition.**

As used in this subchapter, unless the context otherwise requires, "church bus" means any bus or van which:

(1) Is used to transport people to or from any church or church function;

(2) Has a sign on the front and rear of such bus or van with the words "CHURCH BUS" written in letters of not less than eight inches (8") in height;

(3) Is equipped with flasher lights to indicate that the bus or van is receiving or discharging its passengers; and

(4) Is of a color other than school bus yellow.

**History.** Acts 1983, No. 398, § 1; A.S.A. 1947, § 75-668.

### **27-51-1102. Penalty.**

(a) Any person who violates any of the provisions of this subchapter shall, upon conviction, be guilty of a misdemeanor.

(b) A convicted violator shall be fined not less than thirty-five dollars (\$35.00) nor more than five hundred dollars (\$500) or imprisoned not more than ninety (90) days, or both.

**History.** Acts 1983, No. 398, § 4; A.S.A. 1947, § 75-668.3.

### **27-51-1103. Loading points.**

(a) The driver of a church bus shall stop the bus in the right-hand traffic lane at loading points where passengers cross the highway in the process of loading or unloading and at loading points where the shoulder of the road is so narrow that pulling to the shoulder is unsafe or impractical.

(b) At loading points where no passengers cross the highway in the process of loading or unloading and where there is a sufficient and safe area at the right to remove the bus completely from the highway, then the bus driver shall remove the bus from the highway for loading or unloading.

**History.** Acts 1983, No. 398, § 3; A.S.A. 1947, § 75-668.2.

### **27-51-1104. Passing stopped church bus prohibited — Exception.**

(a) When any church bus stops and indicates by flasher lights that the bus is loading or unloading passengers, every operator of a motor vehicle or motorcycle approaching it from any direction shall bring the motor vehicle or motorcycle to a full stop and shall not start or attempt to pass in any direction until the bus has finished receiving or discharging its passengers.

(b) If the bus is operated on multiple lane highways divided by a parkway or dividing strip of twenty feet (20') or more in width and if the bus is on the opposite side of the parkway or dividing strip, then the driver of the approaching vehicle need not stop but shall proceed with due caution for the safety of the passengers of the bus.



**History.** Acts 1983, No. 398, § 2; A.S.A. 1947, § 75-668.1.

## SUBCHAPTER 12 — PEDESTRIANS

### SECTION.

27-51-1201. Privileges and restrictions generally.  
27-51-1202. Pedestrians' right-of-way in crosswalks.

### SECTION.

27-51-1203. Use of crosswalks.  
27-51-1204. Pedestrians crossing at other than crosswalks.  
27-51-1205. Soliciting rides.

**Effective Dates.** Acts 1937, No. 300, § 165; Mar. 23, 1937. Emergency clause provided: "It is hereby ascertained and determined by the General Assembly that the proper regulation of traffic on the highways is a necessary function of the State Government, and that the loss of life

and property under the present laws creates an emergency. Therefore, this act being necessary for the immediate preservation of the public peace, health and safety, shall go into effect immediately upon its passage and approval."

## RESEARCH REFERENCES

**ALR.** Who is "pedestrian" entitled to rights and subject to duties provided by traffic regulations or judicially stated. 35 A.L.R.4th 1117.

**Am. Jur.** 7A Am. Jur. 2d, Auto., § 285 et seq.

**C.J.S.** 60A C.J.S., Motor Veh., § 382 et seq.

### 27-51-1201. Privileges and restrictions generally.

Pedestrians shall be subject to traffic control signals at intersections as declared in this act, but at all other places pedestrians shall be accorded the privileges and shall be subject to restrictions stated in this subchapter.

**History.** Acts 1937, No. 300, § 75; Pope's Dig., § 6733; A.S.A. 1947, § 75-626.

**Meaning of "this act".** Acts 1937, No. 300, codified as §§ 6-19-111, 27-35-101 — 27-35-111, 27-36-101, 27-36-102, 27-36-201 — 27-36-204, 27-36-206 — 27-36-212, 27-36-213 [repealed], 27-36-214 — 27-36-220, 27-37-101, 27-37-102, 27-37-202 — 27-37-206, 27-37-301 — 27-37-303, 27-37-305, 27-37-401, 27-37-501, 27-37-502, 27-37-601, 27-49-101 — 27-49-112, 27-49-201 — 27-49-219, 27-50-101, 27-50-102, 27-50-304, 27-50-307, 27-50-308, 27-50-601 —

27-50-603, 27-50-604 [repealed], 27-50-605, 27-50-801 [repealed], 27-50-804, 27-50-805, 27-51-201, 27-51-202, 27-51-206, 27-51-208 — 27-51-211, 27-51-301 — 27-51-308, 27-51-401 — 27-51-405, 27-51-501 — 27-51-503, 27-51-601 — 27-51-603, 27-51-702, 27-51-703, 27-51-705, 27-51-801 — 27-51-803, 27-51-901 — 27-51-903, 27-51-1201 — 27-51-1205, 27-51-1301 — 27-51-1304, 27-51-1306 — 27-51-1308, 27-51-1401 — 27-51-1405, 27-52-101, 27-52-103 — 27-52-109, 27-53-101 — 27-53-105, 27-53-201 — 27-53-208.

**27-51-1202. Pedestrians' right-of-way in crosswalks.**

(a) Where traffic control signals are not in place or in operation, the driver of a vehicle shall yield the right-of-way, slowing down or stopping if need be to yield, to a pedestrian crossing the roadway within any marked crosswalk or within any unmarked crosswalk at an intersection, except as otherwise provided in this subchapter.

(b) Whenever any vehicle is stopped at a marked crosswalk or at any unmarked crosswalk at an intersection to permit a pedestrian to cross the roadway, the driver of any other vehicle approaching from the rear shall not overtake and pass the stopped vehicle.

**History.** Acts 1937, No. 300, § 76;  
Pope's Dig., § 6734; A.S.A. 1947, § 75-627.

**CASE NOTES****Traffic Control Signals.**

Subsection (b) of this section was not applicable to an action for injuries incurred by a pedestrian who was struck by a motor vehicle while walking in a painted crosswalk provided for pedestrians at an

intersection which was controlled by traffic signals to which the pedestrian was subject by statute. *Washburn v. Stuart's Muffler Shop*, 257 Ark. 59, 513 S.W.2d 913 (1974).

**27-51-1203. Use of crosswalks.**

Pedestrians shall move, whenever practicable, upon the right half of crosswalks.

**History.** Acts 1937, No. 300, § 78;  
Pope's Dig., § 6736; A.S.A. 1947, § 75-629.

**CASE NOTES**

**Cited:** *Rogers v. Kelly*, 284 Ark. 50, 679 S.W.2d 184 (1984).

**27-51-1204. Pedestrians crossing at other than crosswalks.**

(a) Every pedestrian crossing a roadway at any point other than within a marked crosswalk or within an unmarked crosswalk at an intersection shall yield the right-of-way to all vehicles upon the roadway.

(b) Any pedestrian crossing a roadway at a point where a pedestrian tunnel or overhead pedestrian crossing has been provided shall yield the right-of-way to all vehicles upon the roadway.

(c) Between adjacent intersections at which traffic control signals are in operation, pedestrians shall not cross at any place except in a marked crosswalk.

(d) Notwithstanding the provisions of this section, every driver of a vehicle shall exercise due care to avoid colliding with any pedestrian

upon any roadway and shall give warning by sounding the horn when necessary and shall exercise proper precaution upon observing any child or any confused or incapacitated person upon a roadway.

**History.** Acts 1937, No. 300, § 77; Pope’s Dig., § 6735; A.S.A. 1947, § 75-628.

CASE NOTES

ANALYSIS

Duty of Drivers.  
Instructions.  
Standards.

Duty of Drivers.

The failure of a driver to sound his horn, to take earlier diversionary action, or to sooner apply his brakes to avoid hitting a pedestrian are significant on the questions of speed, control, and lookout. Thomas v. Newman, 262 Ark. 42, 553 S.W.2d 459 (1977).

Even though a pedestrian is required to yield the right-of-way when crossing a highway at a point other than a marked crosswalk, failure to do so does not relieve the driver of an approaching vehicle of the obligation to exercise ordinary care to

avoid colliding with the pedestrian and to give warning by the sounding of a horn, when necessary. Thomas v. Newman, 262 Ark. 42, 553 S.W.2d 459 (1977).

Instructions.

The trial court in instructing the jury on the statutory duty of a pedestrian crossing at other than crosswalks should not have substituted the word “person” for “child or any confused or incapacitated person.” Holcomb v. Gilbraith, 257 Ark. 32, 513 S.W.2d 796 (1974).

Standards.

The weight given the evidence of violation of this section was to be determined in the light of the standards set out in the Arkansas Model Jury Instructions. Blythe v. Byrd, 251 Ark. 363, 472 S.W.2d 717 (1971).

27-51-1205. Soliciting rides.

No person shall stand in a roadway for the purpose of soliciting a ride from the driver of any private vehicle.

**History.** Acts 1937, No. 300, § 79; Pope’s Dig., § 6737; A.S.A. 1947, § 75-630.

SUBCHAPTER 13 — STOPPING, STANDING, OR PARKING

SECTION.

- 27-51-1301. Restrictions on stopping, standing, or parking generally.
- 27-51-1302. Stopping, standing, or parking prohibited in specified places.
- 27-51-1303. Stopping, standing, or parking outside of business or residence district.

SECTION.

- 27-51-1304. Authority to remove illegally stopped vehicles.
- 27-51-1305. Removal of motor vehicles parked without authority in parking lots.
- 27-51-1306. Unattended motor vehicles.
- 27-51-1307. Opening door on traffic side.
- 27-51-1308. Starting of vehicles.
- 27-51-1309. Backing of vehicles.



**Effective Dates.** Acts 1937, No. 300, § 165; Mar. 23, 1937. Emergency clause provided: "It is hereby ascertained and determined by the General Assembly that the proper regulation of traffic on the highways is a necessary function of the State Government, and that the loss of life

and property under the present laws creates an emergency. Therefore, this act being necessary for the immediate preservation of the public peace, health and safety, shall go into effect immediately upon its passage and approval."

### RESEARCH REFERENCES

**Am. Jur.** 7A Am. Jur. 2d, Auto., § 268 et seq.

60A C.J.S., Motor Veh., § 329 et seq.

**C.J.S.** 60 C.J.S., Motor Veh., § 28(1) et seq.

### 27-51-1301. Restrictions on stopping, standing, or parking generally.

(a) Except as otherwise provided in this section, every vehicle stopped or parked upon a roadway where there are adjacent curbs shall be stopped or parked with the right-hand wheels of the vehicle parallel to and within eighteen inches (18") of the right-hand curb.

(b) Local authorities may, by ordinance, permit parking of vehicles with the left-hand wheels adjacent to and within eighteen inches (18") of the left-hand curb of a one-way roadway.

(c) Local authorities may by ordinance permit angle parking on any roadway, except that angle parking shall not be permitted on any federal-aid or state highway unless the State Highway Commission has determined by resolution or order entered in its minutes that the roadway is of sufficient width to permit angle parking without interfering with the free movement of traffic.

(d)(1) The commission, with respect to highways under its jurisdiction, may place signs prohibiting or restricting the stopping, standing, or parking of vehicles on any highway where in its opinion, as evidenced by resolution or order entered in its minutes, stopping, standing, or parking is dangerous to those using the highway or where the stopping, standing, or parking of vehicles would unduly interfere with the free movement of traffic thereon.

(2) Signs shall be official signs, and no person shall stop, stand, or park any vehicle in violation of the restrictions stated on the signs.

**History.** Acts 1937, No. 300, § 93; Pope's Dig., § 6750; Acts 1959, No. 307, § 38; A.S.A. 1947, § 75-650.

**Cross References.** Penalty for violation of 1959 amendatory act, § 27-50-305.

### 27-51-1302. Stopping, standing, or parking prohibited in specified places.

(a) No person shall stop, stand, or park a vehicle, except when necessary to avoid conflict with other traffic or in compliance with the

directions of a police officer or a traffic control device, in any of the following places:

- (1) On a sidewalk;
- (2) In front of a public or a private driveway;
- (3) Within an intersection;
- (4) Within fifteen feet (15') of a fire hydrant;
- (5) On a crosswalk;
- (6) Within twenty feet (20') of a crosswalk at an intersection;
- (7) Within thirty feet (30') upon the approach to any flashing beacon, any stop sign, or any traffic-control signal located at the side of a roadway;
- (8) Between a safety zone and the adjacent curb or within thirty feet (30') of points on the curb immediately opposite the ends of a safety zone, unless the local traffic authority indicates a different length by signs or markings;
- (9) Within fifty feet (50') of the nearest rail of a railroad crossing;
- (10) Within twenty feet (20') of the driveway entrance to any fire station and on the side of a street opposite the entrance to any fire station within seventy-five feet (75') of the entrance when properly signposted;
- (11) Alongside or opposite any street excavation or any street obstruction when stopping, standing, or parking would obstruct traffic;
- (12) On a roadway side of any vehicle stopped or parked at the edge of a curb or a street;
- (13) Upon any bridge or other elevated structure upon a highway or within a highway tunnel;
- (14) At any place where official signs prohibit stopping; or
- (15) On the shoulders, the median, the ramps, and all other highway rights-of-way along interstate or fully controlled access highways, except in designated parking areas, provided that stopping, standing, or parking that is brief in duration and is due to an emergency, a vehicle disablement, or to correct or avert an unsafe condition shall not be considered a violation of this section.

(b) No person shall move a vehicle not owned by the person into any such prohibited area or away from a curb a distance that is unlawful.

**History.** Acts 1937, No. 300, § 92; Pope's Dig., § 6749; A.S.A. 1947, § 75-649; Acts 2007, No. 997, § 1.

**Amendments.** The 2007 amendment added (a)(15) and made related changes.

## CASE NOTES

### ANALYSIS

City Truck Routes.  
Evidence of Negligence.

#### City Truck Routes.

State Highway Commission has author-

ity to prohibit parking on state highway truck routes within a city. *Arkansas State Hwy. Comm'n v. City of Little Rock*, 227 Ark. 660, 300 S.W.2d 929 (1957).

#### Evidence of Negligence.

Violation of this section does not consti-

tute negligence per se, but is only evidence of negligence. *Young v. Dodson*, 239 Ark. 143, 388 S.W.2d 94 (1965).

**Cited:** *Tinnon v. Burlington N. R. Co.*, 898 F.2d 1340 (8th Cir. 1990).

**27-51-1303. Stopping, standing, or parking outside of business or residence district.**

(a)(1) Upon any highway outside of a business or residential district, no person shall stop, park, or leave standing any vehicle, whether attended or unattended, upon the paved or main-traveled part of the highway when it is practicable to stop, park, or leave the vehicle off that part of the highway. In every event, an unobstructed width of the highway opposite a standing vehicle shall be left for the free passage of other vehicles, and a clear view of the stopped vehicles shall be available from a distance of two hundred feet (200') in each direction upon the highway.

(2) Any driver who shall violate the provisions of this section shall be liable for any damages of which the violation is the proximate cause.

(3) This subsection shall not apply to:

(A) Employees or vehicles of the Arkansas State Highway and Transportation Department engaged in necessary construction, maintenance, or repair of the highways;

(B) Authorized emergency vehicles on emergency trips such as police vehicles on duty, fire vehicles on calls, or ambulances and wreckers engaged in the removal of persons or vehicles from the traveled part of the highway; or

(C) Public utility or service vehicles of any type, including, but not limited to, mail delivery, overnight couriers, electric or gas utility, or solid waste collection if the utility or service vehicles are at least one-half (½) outside the designated lane and remain on the highway only for the time reasonably necessary to perform the required service.

(b) This section shall not apply to the driver of any vehicle which is disabled while on the paved or main-traveled portion of a highway in a manner and to an extent that it is impossible to avoid stopping and temporarily leaving the disabled vehicle in that position.

**History.** Acts 1937, No. 300, § 90; Pope's Dig., § 6747; Acts 1959, No. 307, § 37; 1979, No. 674, § 1; A.S.A. 1947, § 75-647; Acts 2003, No. 863, § 1.

**Cross References.** Penalty for violation of 1959 amendatory act, § 27-50-305.

**CASE NOTES**

**ANALYSIS**

Applicability.  
Directed Verdicts.  
Exceptions.

Instructions.  
Jury Questions.  
Negligence.  
Pavement.  
Temporary Stopping.



**Applicability.**

This section does not apply to collisions that occur in a residential district. *Burchfield v. Carroll*, 255 Ark. 245, 499 S.W.2d 620 (1973).

This section does not apply to stops arising out of the exigencies of traffic. *Burchfield v. Carroll*, 255 Ark. 245, 499 S.W.2d 620 (1973); *Mack v. Wilkerson*, 304 Ark. 114, 801 S.W.2d 26 (1990).

**Directed Verdicts.**

Where there was evidence that defendant failed to park its truck as required by this section, the defendant was not entitled to a directed verdict. *United Transports, Inc. v. Johnson*, 215 Ark. 411, 220 S.W.2d 814 (1949).

The action of persons in deliberately leaving their vehicles, after a minor collision, in such a position so as to block the entire east lane of traffic on a main artery highway at dusky dark in violation of this section was such that reasonable men might conclude that the action constituted actionable negligence, proximately causing or contributing to the cause of a second collision and that a fact question was made as to their negligence, if any, for determination by the jury, so that a directed verdict relieving them from liability constituted error. *Shearer v. Morgan*, 240 Ark. 616, 401 S.W.2d 21 (1966).

**Exceptions.**

Where truck developed motor trouble, and driver was forced to stop truck partly on shoulder and partly on paved portion of highway, and driver put out flares and later attempted to have truck towed to safety, but was again forced to leave it partly on highway, with about five inches of it extending over highway, and he again set out flares and made a phone call presumably for assistance, the parking of the truck came within exception to this section prohibiting parking on highways. *Waycaster v. Sorenson*, 124 F. Supp. 892 (W.D. Ark. 1954).

**Instructions.**

In action for damages caused by collision with unlighted rear of truck, instruction predicated liability upon finding that failure to provide taillight was proximate cause of damages was erroneous because taillight could have been extinguished by means other than defendant's negligence. *Floyd v. Johnson*, 193 Ark. 518, 100

S.W.2d 975 (1937) (decision under prior law).

In action for injuries to occupants of automobile struck by truck approaching in opposite direction while passing another momentarily stopped truck from the rear, instruction in the language of this section was prejudicial to defendant absent evidence that the truck was parked on the highway, since it would permit the jury to find that it was unlawful in any event to stop a motor vehicle on the highway. *A.S. Barboro & Co. v. James*, 205 Ark. 53, 168 S.W.2d 202 (1943).

In action for recovery of damages sustained in automobile accident where trial court gave defendant's instruction modifying it by including verbatim one of plaintiff's instructions that purported to be verbatim of this section but which in fact omitted several words of the section, such error could not be assigned to the trial court. *Riggan v. Langley*, 238 Ark. 649, 383 S.W.2d 661 (1964).

Where the court gave an instruction requested by defendant, modifying it by including one requested by plaintiff which purported to state subsection (a) of this section verbatim, but which omitted certain words therefrom, the error in giving such instruction was invited by plaintiff and not assignable to the court. *Riggan v. Langley*, 238 Ark. 649, 383 S.W.2d 661 (1964).

Where the undisputed evidence showed the plaintiff had not parked her motor vehicle upon the traveled portion of the highway, but showed she momentarily stopped because of the exigencies of traffic, it was prejudicial error for the trial court, over the objections of the plaintiff, to include this section in the instructions. *Toney v. Miller*, 268 Ark. 795, 597 S.W.2d 102 (Ct. App. 1980), overruled, *Eisner v. Fields*, 67 Ark. App. 238, 998 S.W.2d 421 (1999).

Where the judge, in an automobile accident case, instructed the jury in accordance with this section and the applicable model jury instruction that no one should stop or park on the paved portion of the highway, but should leave an unobstructed width of highway for the passage of other vehicles, the parked vehicle to be visible for 200 feet in either direction, the jury was properly instructed that a violation of this section was evidence of negligence, and the trial judge did not err in

failing to include the part of this section that states that a driver who violates this section shall be liable for any damages which proximately result from such violation, since to have included the omitted part of this section would have emphasized this section over the others and since the omitted part was in conflict with the applicable model jury instructions. *Price v. Watkins*, 283 Ark. 502, 678 S.W.2d 762 (1984).

### **Jury Questions.**

Negligence of truck driver in not parking truck on shoulder of road, where truck was heavily loaded, tires on right rear wheels were flat, and shoulder was soft so that it would have been impossible to jack up the wheels, was for jury. *Presley v. Schenebeck*, 194 Ark. 1069, 110 S.W.2d 5 (1937) (decision under prior law).

Issue as to whether it is practical for a driver to drive vehicle off paved portion of highway before stopping is for the jury. *American Bus Lines, Inc. v. Merritt*, 221 Ark. 596, 254 S.W.2d 963 (1953); *Johnson Timber Corp. v. Sturdivant*, 295 Ark. 622, 752 S.W.2d 241 (1988).

### **Negligence.**

Driver of bus company was guilty of negligence in parking on paved highway near intersection with county gravel road where evidence showed that bus could have been parked off the pavement or that it could have been parked on gravel portion of county road. *American Bus Lines, Inc. v. Merritt*, 221 Ark. 596, 254 S.W.2d 963 (1953).

Before guest could recover for injuries, the burden was upon her to prove that her injuries were caused by the host operating his automobile in a willful and wanton manner in disregard of guest's rights. Willful misconduct, or to operate an automobile in willful and wanton disregard of the rights of others, means something more than gross negligence. Willful negligence is greater in degree than gross negligence; to be willfully negligent one must

be conscious of his conduct, that is, he must, in the light of surrounding circumstances, comprehend that his actions will naturally or probably result in injury. *Poole v. James*, 231 Ark. 810, 332 S.W.2d 833 (1960).

Trial court's findings that it was neither impossible nor impracticable to park a tractor-trailer truck with a flat tire off the traveled portion of the highway, as required by this section, and that such failure constituted contributory negligence, was supported by sufficient evidence to sustain findings. *Butler v. Reynolds & Draper Lumber Co.*, 239 Ark. 135, 387 S.W.2d 607 (1965).

### **Pavement.**

Provisions requiring 20 feet of pavement to remain clear and unobstructed opposite a standing vehicle were held to mean 20 feet of the paved or improved or main traveled part of the highway and not to mean 20 feet including the shoulder. *Waycaster v. Sorenson*, 124 F. Supp. 892 (W.D. Ark. 1954) (decision under prior law).

### **Temporary Stopping.**

Temporary stopping by bus on paved portion of highway for purpose of discharging passengers constitutes a violation of this section, if stopping on paved portion is not justified. *American Bus Lines, Inc. v. Merritt*, 221 Ark. 596, 254 S.W.2d 963 (1953).

This section does not prohibit any person from leaving a vehicle on the main-traveled portion of a highway when it is impossible to stop, park, or leave the vehicle off such portion of the highway. However, the statute requires that "in every event an unobstructed width of the highway opposite a standing vehicle shall be left for the free passage of other vehicles." *Johnson Timber Corp. v. Sturdivant*, 295 Ark. 622, 752 S.W.2d 241 (1988).

**Cited:** *Dacus v. State*, 16 Ark. App. 222, 699 S.W.2d 417 (1985); *Johnson Timber Corp. v. Sturdivant*, 295 Ark. 622, 752 S.W.2d 241 (1988).

## **27-51-1304. Authority to remove illegally stopped vehicles.**

(a) Whenever any police officer finds a vehicle standing upon a highway in violation of any of the provisions of this subchapter, the officer is authorized to move the vehicle or require the driver or other



person in charge of the vehicle to move it to a position off the paved or improved or main-traveled part of the highway.

(b) Whenever any police officer finds a vehicle unattended upon any bridge or causeway or in any tunnel where the vehicle constitutes an obstruction to traffic, the officer is authorized to provide for the removal of the vehicle consistent with § 27-50-1207.

**History.** Acts 1937, No. 300, § 91; Pope's Dig., § 6748; A.S.A. 1947, § 75-648; Acts 2001, No. 1705, § 1.

### **27-51-1305. Removal of motor vehicles parked without authority in parking lots.**

(a) Consistent with the procedures of § 27-50-1101, the owner of a parking lot, his or her agent, or the lessee of a space in a parking lot may cause any motor vehicle which is parked on the lot without the consent of the owner of the lot or of his or her agent or which is parked in the space of the lessee without the consent of the lessee to be removed and stored at the expense of the owner or operator of the vehicle if a readable sign is prominently placed at each entrance to the lot specifying those persons who may park in the lot and prohibiting parking therein by all others.

(b) The owner of a lot or the lessee of a space in a lot who has an unauthorized vehicle removed and stored under the provisions of subsection (a) of this section shall not be liable for damages incurred by the owner or operator of an unauthorized vehicle as a result of removal or storage if the vehicle is removed by an insured vehicle wrecker service and stored by an insured storage company.

**History.** Acts 1971, No. 200, §§ 1, 2; A.S.A. 1947, §§ 75-651.1, 75-651.2; Acts 2005, No. 2211, § 7.

### **27-51-1306. Unattended motor vehicles.**

No person driving or in charge of a motor vehicle shall permit it to stand unattended without first stopping the engine, locking the ignition, and removing the key, or, when standing upon any perceptible grade, without effectively setting the brake and turning the front wheels to the curb or side of the highway.

**History.** Acts 1937, No. 300, § 94; Pope's Dig., § 6751; Acts 1959, No. 307, § 40; A.S.A. 1947, § 75-651. **Cross References.** Penalty for violation of 1959 amendatory act, § 27-50-305.

## **RESEARCH REFERENCES**

**Ark. L. Rev.** Automobiles — Negligence — Liability of Owner for Negligence of Thief, 9 Ark. L. Rev. 449.



## CASE NOTES

## ANALYSIS

Instructions.  
Negligence.

**Instructions.**

In an action by a father of a four-year-old child for the child's death by being run over by the defendant's motor truck, it was error to instruct the jury that the fact that the defendant's driver permitted the engine of the motor truck to run while he was delivering groceries could be considered as an element of negligence entitling the plaintiff to recover damages, although the action was a violation of law, where

there was no evidence showing the injury was the proximate cause of such action. *Mays v. Ritchie Grocery Co.*, 177 Ark. 35, 5 S.W.2d 728 (1928) (decision under prior law).

**Negligence.**

Where driver parked tractor-trailer on downgrade in close proximity to vehicle in front of him without turning vehicle's wheels to the side of the road or stopping the engine and putting tractor in gear and vehicle rolled forward because of defective brakes and crushed a person, driver was guilty of negligence. *Beaty v. Buckeye Fabric Finishing Co.*, 179 F. Supp. 688 (E.D. Ark. 1959).

**27-51-1307. Opening door on traffic side.**

No person shall open the door of a motor vehicle on the side available to moving traffic unless and until it is reasonably safe to do so, nor shall any person leave a door open on the side of a vehicle available to moving traffic for a period of time longer than necessary to load or unload passengers.

**History.** Acts 1937, No. 300, § 94; 1959, No. 307, § 40; A.S.A. 1947, § 75-651.

**Cross References.** Penalty for violation of 1959 amendatory act, § 27-50-305.

**27-51-1308. Starting of vehicles.**

No person shall start a vehicle which is stopped, standing, or parked unless and until movements can be made with reasonable safety.

**History.** Acts 1937, No. 300, § 66; Pope's Dig., § 6724; A.S.A. 1947, § 75-617.

## CASE NOTES

## ANALYSIS

Duty to Lookout.  
Shopping Center Lots.

**Duty to Lookout.**

Driver of car being pushed on highway by pickup truck to start the motor was under a duty to keep a reasonable and prudent lookout ahead for other vehicles, persons, or property which might be on or alongside the highway so as to constitute

an immediate hazard. *Easley v. Inglis*, 233 Ark. 589, 346 S.W.2d 206 (1961).

**Shopping Center Lots.**

Inasmuch as a shopping center parking lot is not a highway, a person whose car collided with another vehicle as he was pulling out of a parking space could not be charged with the violation of failure to yield right-of-way. *Hartson v. City of Pine Bluff*, 270 Ark. 748, 606 S.W.2d 149 (1980).

## 27-51-1309. Backing of vehicles.

(a) The driver of a vehicle shall not back a vehicle upon any roadway unless the movement can be made with reasonable safety and without interfering with other traffic.

(b) The driver of a vehicle shall not back a vehicle on any access road, entrance ramp, exit ramp, shoulder, or road surface of any controlled-access highway.

**History.** Acts 2001, No. 313, § 1.

### CASE NOTES

#### Evidence to Support Stop.

Denial of defendant's motion to suppress before she pled guilty to possession of marijuana with intent to deliver was inappropriate because the facts within the officer's knowledge were insufficient to permit him to have believed that a vehicle

could not be backed down the road with reasonable safety and without interfering with traffic. Thus, there was no probable cause to stop under subsection (a) of this section. *Stokes v. State*, 375 Ark. 394, 291 S.W.3d 155 (2009).

## SUBCHAPTER 14 — MISCELLANEOUS RULES

### SECTION.

27-51-1401. Obstruction to driver's view or driving mechanism prohibited.

27-51-1402. Driving through safety zone prohibited.

27-51-1403. Driving on mountain highways.

27-51-1404. Coasting prohibited.

### SECTION.

27-51-1405. Throwing destructive or injurious materials on highway prohibited.

27-51-1406. Warning by motorists to persons and animals on highway.

27-51-1407. Stopping for frightened horses.

**Effective Dates.** Acts 1911, No. 134, § 20: effective on passage.

Acts 1937, No. 300, § 165: Mar. 23, 1937. Emergency clause provided: "It is hereby ascertained and determined by the General Assembly that the proper regulation of traffic on the highways is a necessary function of the State Government,

and that the loss of life and property under the present laws creates an emergency. Therefore, this act being necessary for the immediate preservation of the public peace, health and safety, shall go into effect immediately upon its passage and approval."

## 27-51-1401. Obstruction to driver's view or driving mechanism prohibited.

(a) No person shall drive a vehicle when it is so loaded or when there are in the front seat a number of persons, exceeding three (3), as to obstruct the view of the driver to the front or sides of the vehicle so as to interfere with the driver's control over the driving mechanism of the vehicle.

(b) No passenger in a vehicle or streetcar shall ride in such position as to interfere with the driver's or streetcar operator's view ahead or to the sides or to interfere with his or her control over the driving mechanism of the vehicle or streetcar.

**History.** Acts 1937, No. 300, § 95; Pope's Dig., § 6752; A.S.A. 1947, § 75-652.

**Cross References.** Obstructed view of motor vehicle interior prohibited, § 27-37-304.

## CASE NOTES

### ANALYSIS

Instructions.  
Negligence.

#### Instructions.

Under evidence that there were four persons in the cab of truck involved in motor collision and a woman was sitting in the lap of one man, showing a crowded condition and obstruction of the driver's view to the right, instruction that, in determining whether driver was negligent in operating the truck, it is unlawful to drive a vehicle on the public highways when there are in the front seat such number of persons, exceeding three, as to obstruct the view of the driver to the front or sides of the vehicle so as to interfere with the driver's control over the driving mechanism of the vehicle was not erroneous as abstract. *Warren v. Hale*, 203 Ark. 608, 158 S.W.2d 51 (1942).

In suit for damages to truck which struck another truck which was parked along highway, trial court properly gave instructions concerning more than three people riding in driver's seat where evi-

dence showed that four people were riding in the overtaking truck and one of the four persons testified that he could not see to the left because the head of one of his companions was in the way. *Woodruff Elec. Coop. Corp. v. Weis Butane Gas Co.*, 225 Ark. 114, 279 S.W.2d 564 (1955).

#### Negligence.

Driver of a loaded school bus coming into the school ground on the driveway for that purpose and driving at a moderate rate of speed along the driveway by the side of the building and fence to the usual spot for his pupil passengers to debark from the bus was not negligent in failing to notice that plaintiff, 10-year-old school pupil, was pursuing the bus along the right side of the bus in a place of danger until after such plaintiff had fallen under the right rear wheels of the bus, nor was it negligence to drive the bus without a mirror on the right-hand side so situated that the bus driver could see a person approaching along the right-hand side of the bus. *Sams v. Pacific Indem. Co.*, 170 F. Supp. 909 (W.D. Ark. 1959), dismissed, 271 F.2d 126 (8th Cir. 1959).

## 27-51-1402. Driving through safety zone prohibited.

No vehicle shall at any time be driven through or within a safety zone.

**History.** Acts 1937, No. 300, § 83; Pope's Dig., § 6741; A.S.A. 1947, § 75-636.

## 27-51-1403. Driving on mountain highways.

The driver of a motor vehicle traveling through defiles or canyons or on mountain highways shall hold the motor vehicle under control and as near the right-hand edge of the highway as reasonably possible and, upon approaching any curve where the view is obstructed within a



distance of two hundred feet (200') along the highway, shall give audible warning with the horn of the motor vehicle.

**History.** Acts 1937, No. 300, § 96; Pope's Dig., § 6753; A.S.A. 1947, § 75-653.

#### **27-51-1404. Coasting prohibited.**

(a) The driver of any motor vehicle when traveling upon a downgrade shall not coast with the gears of the vehicle in neutral.

(b) The driver of a commercial motor vehicle when traveling upon a downgrade shall not coast with the clutch disengaged.

**History.** Acts 1937, No. 300, § 97; Pope's Dig., § 6754; A.S.A. 1947, § 75-654.

#### **27-51-1405. Throwing destructive or injurious materials on highway prohibited.**

(a) No person shall throw or deposit upon any highway any glass bottle, glass, nails, tacks, wire, cans, or any other substance likely to injure any person, animal, or vehicle upon the highway.

(b) Any person who drops or permits to be dropped or thrown upon any highway any destructive or injurious material shall immediately remove it or cause it to be removed.

(c) Any person removing a wrecked or damaged vehicle from a public highway, as defined by § 27-51-101, shall remove any glass or other injurious substance dropped upon the public highway from the vehicle.

**History.** Acts 1937, No. 300, § 100; Pope's Dig., § 6757; A.S.A. 1947, § 75-657; Acts 1999, No. 82, § 1.

#### **CASE NOTES**

##### **Injurious Materials.**

A pedestrian who slipped on a yellow substance similar to feed while he was walking along a state highway railroad crossing could not base an action against the railroad upon this section, inasmuch

as the substance in question was not shown to be a destructive or injurious material which the railroad would have a duty to remove. *Bowie v. Missouri P. R. Co.*, 262 Ark. 793, 561 S.W.2d 314 (1978).

#### **27-51-1406. Warning by motorists to persons and animals on highway.**

Upon approaching a person walking upon or along a public highway or a horse or other draft animal being ridden, led, or driven thereon, the operator of a motor vehicle or motor bicycle shall give reasonable warning of his or her approach and use every reasonable precaution to avoid injuring the persons or frightening the horses or other draft animals.

**History.** Acts 1911, No. 134, § 17, p. 94;  
C. & M. Dig., § 7433; Pope's Dig., § 6645;  
A.S.A. 1947, § 75-661.

### CASE NOTES

#### ANALYSIS

Instructions.  
Jury Questions.  
Proximate Cause.

#### Instructions.

While it is not error to instruct in the language of this section, it is not necessary when instruction is covered in court's other instructions. *Ransom v. Weisharr*, 236 Ark. 898, 370 S.W.2d 598 (1963).

#### Jury Questions.

In action for injuries from an automobile accident, evidence that motorist failed to stop after striking plaintiff and that she continued to live in the vicinity presented a jury question of whether motorist had by

any improper action of her own concealed from plaintiff his cause of action as to preclude the running of the statute of limitations. *Kurry v. Frost*, 204 Ark. 386, 162 S.W.2d 48 (1942).

#### Proximate Cause.

A truck driver who overtook a horseman on the highway at excessive speed and failed to reduce speed sufficiently to avoid collision with the horse, although seeing it in time to have done so, was negligent and such negligence was a proximate cause of his collision with the horse. *Collins v. Southern Cent. Co.*, 275 F. Supp. 369 (W.D. Ark. 1967).

**Cited:** *Bean v. Coffee*, 169 Ark. 1052, 277 S.W. 522 (1925).

### 27-51-1407. Stopping for frightened horses.

(a) Whenever it shall appear that any horse ridden or driven by any person upon any streets, roads, and highways is about to become frightened by the approach of any motor vehicle, it shall be the duty of the person driving or conducting the motor vehicle to cause it to come to a full stop until the horse shall have passed and, if necessary, assist in preventing an accident.

(b) Any person convicted of violating this section shall be fined in any sum not to exceed two hundred dollars (\$200).

**History.** Acts 1911, No. 134, § 12, p. 94;  
C. & M. Dig., § 7428; Pope's Dig., § 6640;  
A.S.A. 1947, § 75-660.

### CASE NOTES

#### ANALYSIS

Duty of Drivers.  
Instructions.  
Jury Questions.  
Negligence.

#### Duty of Drivers.

It is the duty of the driver of a vehicle upon a public highway to stop when he sees or when, had he been in the exercise of due care, he would have seen that a

horse ridden or driven by another person was frightened or was about to be frightened. *Russ v. Strickland*, 130 Ark. 406, 197 S.W. 709 (1917).

#### Instructions.

In an action for damages caused by the plaintiff's team becoming frightened by the defendant's automobile, it was error to instruct the jury upon the duty of defendant to stop his automobile under provisions of his section, since this section has

no applicability where both vehicles were going in the same direction. *Hardy v. Cloe*, 165 Ark. 253, 263 S.W. 968 (1924).

has been guilty of negligence. *Fleming v. Oates*, 122 Ark. 28, 182 S.W. 509 (1916).

**Jury Questions.**

This section does not impose the absolute duty upon the driver of the automobile to stop his vehicle because a team in front, going in the same direction, appears to be frightened, and under those circumstances it should be left to the trial jury to say whether, under all the circumstances of the case, the driver of the automobile

**Negligence.**  
Alleged conduct of servant driver, driving behind wagon to which mules were hitched, in continuing to sound horn after mules had taken fright at the first sounding of the horn, so that team ran away, was negligence, rendering his master liable for any damages caused thereby. *C.M. Ferguson & Son v. White*, 197 Ark. 183, 121 S.W.2d 894 (1938).

**SUBCHAPTER 15 — PAUL’S LAW: TO PROHIBIT DRIVERS OF MOTOR VEHICLES FROM USING HANDHELD WIRELESS TELEPHONES TO ENGAGE IN TEXT MESSAGING**

SECTION.	SECTION.
27-51-1501. Title.	27-51-1505. Preemption.
27-51-1502. Purpose.	27-51-1506. Penalties.
27-51-1503. Definitions.	
27-51-1504. Use of a handheld wireless telephone when driving.	

**A.C.R.C. Notes.** Acts 2009, No. 181, § 2, provided: "This act applies to all

violations committed on and after October 1, 2009."

**27-51-1501. Title.**

This subchapter is known and may be cited as “Paul’s Law: To Prohibit Drivers of Motor Vehicles from Using Handheld Wireless Telephones to Engage in Text Messaging”.

**History.** Acts 2009, No. 181, § 1.

**27-51-1502. Purpose.**

- The purpose of this subchapter is to:
- (1) Improve the safety of the roads for all drivers and passengers by prohibiting a driver of a motor vehicle from engaging in text messaging;
  - (2) Prevent accidents caused by the distractive practice of text messaging while operating a motor vehicle;
  - (3) Preserve human life and maintain the safety of the citizens of the State of Arkansas and visitors to our state by taking steps to reduce motor vehicle accidents, injuries, and deaths;
  - (4) Reduce health care costs, health insurance rates, and automobile insurance rates by attempting to reduce the number of motor vehicle accidents that cause injury, death, and property damage; and



(5) Reduce the amount of time that law enforcement and the court system work on accidents and offenses arising out of motor vehicle accidents caused by drivers who are distracted by sending or reading text messages.

**History.** Acts 2009, No. 181, § 1.

### **27-51-1503. Definitions.**

As used in this subchapter:

(1)(A) “Handheld wireless telephone” means a wireless interactive communication device with which a user can engage in a text-based communication using at least one (1) hand or by reading a text-based communication.

(B) “Handheld wireless telephone” does not include a:

- (i) Hands-free wireless telephone or device;
- (ii) Citizens band radio; or
- (iii) Citizens band radio hybrid;

(2)(A) “Hands-free wireless telephone or device” means a wireless telephone or other wireless communication device that allows a user to engage in text-based communication without the use of either hand with an:

- (i) Internal feature or function; or
- (ii) Attachment or additional device.

(B) A hands-free wireless telephone or device may be a permanent or temporary part of the wireless telephone or other wireless communication device.

(C) A hands-free wireless telephone or device may require the use of either hand to activate, deactivate, or initiate a function of the wireless telephone or other communication device; and

(3) “Wireless interactive communication” means typing, text messaging, emailing, or accessing information on the Internet with a handheld wireless telephone.

**History.** Acts 2009, No. 181, § 1.

### **27-51-1504. Use of a handheld wireless telephone when driving.**

(a) Except as provided in subsection (b) of this section, a driver of a motor vehicle shall not use a handheld wireless telephone for wireless interactive communication while operating a motor vehicle.

(b)(1) A driver of a motor vehicle may use a handheld wireless telephone for wireless interactive communication in emergencies.

(2) A person is exempt from the requirements of subsection (a) of this section if performing his or her official duties as a:

- (A) Certified law enforcement officer;
- (B) Firefighter;
- (C) Ambulance driver; or
- (D) Emergency medical technician.

**History.** Acts 2009, No. 181, § 1.

**27-51-1505. Preemption.**

This subchapter supersedes and preempts all county or municipal ordinances regarding the use of a handheld wireless telephone for wireless interactive communication while operating a motor vehicle.

**History.** Acts 2009, No. 181, § 1.

**27-51-1506. Penalties.**

A person who pleads guilty or nolo contendere to or has been found guilty of violating this section commits a violation.

**History.** Acts 2009, No. 181, § 1.

**SUBCHAPTER 16 — FEWER DISTRACTIONS MEAN SAFER DRIVING ACT**

SECTION.

- 27-51-1601. Title.
- 27-51-1602. Definitions.
- 27-51-1603. Restrictions on drivers under 18 years of age.
- 27-51-1604. Restrictions on drivers at least 18 but under 21 years of age.

SECTION.

- 27-51-1605. Enforcement.
- 27-51-1606. Preemption.
- 27-51-1607. Penalties.
- 27-51-1608. Applicability.

**27-51-1601. Title.**

This subchapter shall be known and may be cited as the “Fewer Distractions Mean Safer Driving Act”.

**History.** Acts 2009, No. 197, § 1; 2009, No. 247, § 1.

**27-51-1602. Definitions.**

As used in this subchapter:

- (1) “Emergency purpose” means the reason for contacting any of the following to report an emergency:
  - (A) Law enforcement personnel;
  - (B) Fire department personnel;
  - (C) Public safety personnel;
  - (D) Emergency medical personnel; or
  - (E) A 911 public safety communications center;
- (2)(A) “Handheld wireless telephone” means a wireless interactive communication device with which a user engages in a call or text-based communication using at least one (1) hand.
  - (B) “Handheld wireless telephone” does not include:
    - (i) A hands-free wireless telephone or device;
    - (ii) Citizens band radio; or
    - (iii) Citizens band radio hybrid;

(3)(A) “Hands-free wireless telephone or device” means a wireless telephone or other wireless communication device that allows a user to engage in text-based communication without the use of either hand with:

- (i) An internal feature or function; or
- (ii) An attachment or additional device.

(B) A hands-free wireless telephone or device may be a permanent or temporary part of the wireless telephone or other wireless communication device.

(C) A hands-free wireless telephone or device may require the use of either hand to activate, deactivate, or initiate a function of the wireless telephone or other communication device;

(4) “Wireless interactive communication” means talking, typing, text messaging, emailing, or accessing information on the Internet with a wireless telephone; and

(5)(A) “Wireless telephone” means a wireless interactive communication device.

(B) “Wireless telephone” includes a handheld wireless telephone and a hands-free wireless telephone or device.

**History.** Acts 2009, No. 197, § 1; 2009, No. 247, § 1.

### **27-51-1603. Restrictions on drivers under 18 years of age.**

(a) Except as provided under subsection (b) of this section, a driver of a motor vehicle who is under eighteen (18) years of age shall not use a wireless telephone for wireless interactive communication while operating a motor vehicle.

(b) A driver of a motor vehicle who is under eighteen (18) years of age may use a wireless telephone for wireless interactive communication while operating a motor vehicle for an emergency purpose only.

**History.** Acts 2009, No. 197, § 1; 2009, No. 247, § 1.

### **27-51-1604. Restrictions on drivers at least 18 but under 21 years of age.**

(a)(1) Except as otherwise provided in this section, the driver of a motor vehicle who is at least eighteen (18) but under twenty-one (21) years of age shall not use a handheld wireless telephone for wireless interactive communication while operating a motor vehicle.

(2) The driver of a motor vehicle who is at least eighteen (18) but under twenty-one (21) years of age may use a hands-free wireless telephone or device for wireless interactive communication while operating a motor vehicle.

(b) A driver of a motor vehicle who is at least eighteen (18) but under twenty-one (21) years of age may use a handheld wireless telephone for



wireless interactive communication while operating a motor vehicle for an emergency purpose only.

**History.** Acts 2009, No. 197, § 1; 2009, No. 247, § 1.

### **27-51-1605. Enforcement.**

A driver of a motor vehicle is not to be stopped or detained solely to determine compliance with this section.

**History.** Acts 2009, No. 197, § 1; 2009, No. 247, § 1.

### **27-51-1606. Preemption.**

This section supersedes and preempts all county or municipal ordinances regarding wireless telephone use by persons under twenty-one (21) years of age.

**History.** Acts 2009, No. 197, § 1; 2009, No. 247, § 1.

### **27-51-1607. Penalties.**

(a)(1) For a first offense under this subchapter, a person shall be issued a citation that is a warning citation, and no court appearance is required and no penalty shall be imposed by the court.

(2) A record of each warning citation issued shall be maintained.

(b) A person who pleads guilty or nolo contendere to or has been found guilty of violating this subchapter for a second or subsequent offense is guilty of a violation under § 5-1-108 and shall be fined fifty dollars (\$50.00).

**History.** Acts 2009, No. 197, § 1; 2009, No. 247, § 1.

### **27-51-1608. Applicability.**

This subchapter applies to all violations committed on and after October 1, 2009.

**History.** Acts 2009, No. 197, § 1; 2009, No. 247, § 1.

## **CHAPTER 52**

## **TRAFFIC-CONTROL DEVICES**

### **SUBCHAPTER**

1. GENERAL PROVISIONS.
2. UNIFORM SYSTEM.

## RESEARCH REFERENCES

**ALR.** Entrapment to commit traffic offense. 34 A.L.R.4th 1167.

**Am. Jur.** 7A Am. Jur. 2d, Auto., § 232 et seq., § 248 et seq.

**C.J.S.** 60A C.J.S., Motor Veh., §§ 360, 511.21.

## SUBCHAPTER 1 — GENERAL PROVISIONS

## SECTION.

- 27-52-101. Penalty for interference with highway or railroad sign, etc.
- 27-52-102. Penalty for interference with devices in construction areas.
- 27-52-103. Obedience to official devices required.
- 27-52-104. Adoption of uniform system.
- 27-52-105. Devices on state highways.
- 27-52-106. Local devices.
- 27-52-107. Signal legend.
- 27-52-108. Flashing signals.
- 27-52-109. Unauthorized signs, etc., prohibited — Removal.

## SECTION.

- 27-52-110. Automated enforcement device operated by a county government or a department of state government operating outside a municipality.
- 27-52-111. Automated enforcement device operated by a municipality or a department of state government operating within the boundaries of a municipality.

**Effective Dates.** Acts 1937, No. 300, § 165: Mar. 23, 1937. Emergency clause provided: "It is hereby ascertained and determined by the General Assembly that the proper regulation of traffic on the highways is a necessary function of the State Government, and that the loss of life and property under the present laws creates an emergency. Therefore, this act being necessary for the immediate preservation of the public peace, health and safety, shall go into effect immediately upon its passage and approval."

Acts 1939, No. 128, § 4: Feb. 24, 1939. Emergency clause provided: "It is hereby ascertained and declared that there is much vandalism along the highways of the State and that many official highway signs and markers are being unlawfully removed, mutilated, or destroyed; that this removal, mutilation, or destruction of highway signs on the State Highway System is causing great wastage of public funds; that by reason of this unlawful removal, mutilation, or destruction of highway signs and markers accidents are caused and human life is endangered

daily; an emergency is hereby declared to exist and this act being for the preservation of public peace, health and safety shall take effect and be in full force from and after the date of its passage and approval."

Acts 1981, No. 273, § 3: Mar. 3, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that construction areas represent a danger to pedestrian traffic and motor vehicle traffic; that devices are utilized to control traffic in construction areas; that interfering with such traffic control devices creates a substantial risk to the welfare of persons in construction areas; and that this Act is immediately necessary to provide specific criminal penalties for unauthorized persons to interfere with any traffic control devices erected in construction areas. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1987, No. 865, § 3: Apr. 13, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that because of the case Ricarte v. State, CR 86-31, a question has arisen over the validity of Act 1068 of the Extended Session of 1976; that this Act is a reenactment of the former law; and that

the immediate passage of this Act is necessary to clarify the state of the law on this issue. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

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### **27-52-101. Penalty for interference with highway or railroad sign, etc.**

(a) No person shall without lawful authority attempt to or in fact alter, deface, mutilate, injure, knock down, destroy, or remove any official highway traffic-control device, road marker, lighting equipment, or any railroad crossing sign or signal, or any inscription, shield, or transcription thereon or any part thereof.

(b)(1) It is a misdemeanor for any person to violate any of the provisions of subsection (a) of this section.

(2) Every person convicted of a violation of this section shall be punished for:

(A) A first conviction by a fine not less than ten dollars (\$10.00) nor more than one hundred dollars (\$100) or by imprisonment for not more than ten (10) days;

(B) A second conviction by a fine of not less than twenty-five dollars (\$25.00) nor more than two hundred dollars (\$200) or by imprisonment for not more than thirty (30) days, or by both fine and imprisonment; or

(C) A third or subsequent conviction by a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) or by imprisonment for not more than six (6) months, or by both fine and imprisonment.

(c) There is posted a standing reward of ten dollars (\$10.00) to be paid by the State Highway Commission from any funds appropriated for maintenance purposes for information leading to the arrest and conviction of any person willfully or maliciously violating any provision of this section with respect to official signs upon the state highway system.

**History.** Acts 1937, No. 300, § 35; Pope's Dig., § 6693; Acts 1939, No. 128, § 1; A.S.A. 1947, § 75-508.

### **27-52-102. Penalty for interference with devices in construction areas.**

(a) Any unauthorized person who willfully moves, covers, uncovers, alters, tampers with, defaces, or damages any sign, signal, or device erected in a construction area to control the flow of motor vehicle traffic



or pedestrian traffic in, through, or around the construction area shall be deemed guilty of a Class A misdemeanor.

(b) Any person who violates this section in reckless disregard for the safety of human life shall be deemed guilty of a Class D felony.

**History.** Acts 1981, No. 273, § 1; A.S.A. 1947, § 75-508.1.

### **27-52-103. Obedience to official devices required.**

No driver of a vehicle or operator of a streetcar shall disobey the instructions of any official traffic control device placed in accordance with the provisions of this chapter unless at the time otherwise directed by a police officer.

**History.** Acts 1937, No. 300, § 31; Pope's Dig., § 6689; A.S.A. 1947, § 75-504.

### **27-52-104. Adoption of uniform system.**

(a) The State Highway Commission shall adopt a manual and specifications for a uniform system of traffic control devices consistent with the provisions of this chapter for use upon highways within this state.

(b) The uniform system shall correlate with and so far as possible conform to the system then current as approved by the American Association of State Highway and Transportation Officials.

**History.** Acts 1937, No. 300, § 28; Pope's Dig., § 6686; A.S.A. 1947, § 75-501.

### **27-52-105. Devices on state highways.**

(a) The State Highway Commission shall place and maintain traffic control devices conforming to its manual and specifications upon all state highways as it shall deem necessary to indicate and to carry out the provisions of this chapter or to regulate, warn, or guide traffic.

(b) No local authority shall place or maintain any traffic control device upon any highway under the jurisdiction of the commission, except by the latter's permission.

**History.** Acts 1937, No. 300, § 29; Pope's Dig., § 6687; A.S.A. 1947, § 75-502.

## CASE NOTES

## ANALYSIS

Authority.  
Common Law Duties.  
Improper Erection.  
No Parking Signs.

**Authority.**

This section and §§ 27-52-106 and 27-52-107 give the direction and control of traffic located on state highways to the State Highway Commission. *Garrison v. City of Alpena*, 234 Ark. 170, 350 S.W.2d 690 (1961).

**Common Law Duties.**

The allocations of responsibilities to state and local authorities by this section and § 27-52-106 did not supersede railroads' common law duty to provide adequate warning devices at abnormally dangerous grade crossings. *Lusby v.*

*Union Pac. R.R.*, 4 F.3d 639 (8th Cir. 1993).

**Improper Erection.**

It was improper for municipality to erect a traffic light on state highway when State Highway Commission had not given permission to municipality to place or maintain the light and such light did not conform to standards adopted by the commission; thus commission was entitled to injunction requiring traffic light to be removed. *Whitaker v. Arkansas State Hwy. Comm'n*, 234 Ark. 865, 355 S.W.2d 286 (1962).

**No Parking Signs.**

State Highway Commission has power to erect no parking signs on a part of the state highway system that is in city limits. *Arkansas State Hwy. Comm'n v. City of Little Rock*, 227 Ark. 660, 300 S.W.2d 929 (1957).

**27-52-106. Local devices.**

(a)(1) Local authorities in their respective jurisdictions shall place and maintain traffic control devices upon highways under their jurisdiction as they may deem necessary to indicate and to carry out the provisions of this chapter or local traffic ordinances or to regulate, warn, or guide traffic.

(2) All traffic control devices erected shall conform to the state manual and specifications.

(b) Local authorities in exercising those functions referred to in subsection (a) of this section shall be subject to the direction and control of the State Highway Commission.

**History.** Acts 1937, No. 300, § 30; Pope's Dig., § 6688; A.S.A. 1947, § 75-503.

## CASE NOTES

## ANALYSIS

Authority.  
Common Law Duties.  
Conformity to State Manual and Specifications.

**Authority.**

This section and §§ 27-52-105 and 27-52-107 give the direction and control of traffic located on state highways to the

State Highway Commission. *Garrison v. City of Alpena*, 234 Ark. 170, 350 S.W.2d 690 (1961).

A city has the authority to pass local traffic ordinances to regulate, warn, or guide traffic. *Garrison v. City of Alpena*, 234 Ark. 170, 350 S.W.2d 690 (1961).

**Common Law Duties.**

The allocations of responsibilities to state and local authorities by this section

and § 27-52-105 did not supersede railroads' common law duty to provide adequate warning devices at abnormally dangerous grade crossings. *Lusby v. Union Pac. R.R.*, 4 F.3d 639 (8th Cir. 1993).

#### **Conformity to State Manual and Specifications.**

Whether or not traffic control devices placed or erected by a city to carry out

traffic ordinances conform to the state manual and specifications is a matter which can properly be brought up by the State Highway Commission but not by a person convicted of violating a valid traffic ordinance. *Garrison v. City of Alpena*, 234 Ark. 170, 350 S.W.2d 690 (1961).

### **27-52-107. Signal legend.**

(a) Whenever traffic is controlled by traffic-control signals exhibiting the words "GO", "CAUTION", or "STOP", or exhibiting different colored lights successively one (1) at a time or with arrows, the following colors only shall be used, and the terms and lights shall indicate and apply to drivers of vehicles and pedestrians as follows:

(1) Green alone or "GO" means:

(A) Vehicular traffic facing the signal, except when prohibited under § 27-51-802, may proceed straight through or turn right or left unless a sign at such place prohibits either turn, but vehicular traffic, including vehicles turning right or left, shall yield the right-of-way to other vehicles and to pedestrians lawfully within the intersection or an adjacent crosswalk at the time the signal is exhibited,

(B) Pedestrians facing the signal may proceed across the roadway within any marked or unmarked crosswalk;

(2) Steady yellow alone means:

(A) Vehicular traffic facing the signal is warned that the red or "STOP" signal will be exhibited immediately thereafter, and vehicular traffic shall not enter the intersection when the red or "STOP" signal is exhibited.

(B) Pedestrians facing the signal are advised that there is insufficient time to cross the roadway, and any pedestrian then starting to cross shall yield the right-of-way to all vehicles;

(3) Steady red alone or "STOP" means:

(A) Vehicular traffic facing the signal shall stop before entering the crosswalk on the near side of the intersection or, if none, then before entering the intersection and shall remain standing until green or "GO" is shown alone, except that:

(i) Vehicular traffic facing the signal, after coming to a complete stop, may cautiously enter the intersection for the purpose of making a right turn only, unless there is a sign prohibiting the turn; and

(ii) Vehicular traffic in the left lane of a one-way street facing such signal, after coming to a complete stop, may cautiously enter the intersection for the purpose of making a left turn into the left lane of another one-way street only, unless there is a sign prohibiting such turn.



(B) No pedestrian facing the signal shall enter the roadway unless he or she can do so safely and without interfering with any vehicular traffic; and

(4) Steady red with green arrow means:

(A) Vehicular traffic facing the signal may cautiously enter the intersection only to make the movement indicated by the arrow but shall yield the right-of-way to pedestrians lawfully within a crosswalk and to other traffic lawfully using the intersection.

(B) No pedestrian facing the signal shall enter the roadway unless he or she can do so safely and without interfering with any vehicular traffic;

(b)(1) In the event an official traffic-control signal is erected and maintained at a place other than an intersection, the provisions of this section shall be applicable except as to those provisions which by their nature can have no application.

(2) Any stop required shall be made at a sign or marking on the pavement indicating where the stop shall be made, but in the absence of any sign or marking, the stop shall be made at the signal.

(c) The operator of any streetcar shall obey the signals as applicable to vehicles.

(d) Whenever special pedestrian-control signals exhibiting the words "WALK" or "WAIT" or "DON'T WALK" are in place, such signals shall indicate as follows:

(1) "WALK" means pedestrians facing the signal may proceed across the roadway in the direction of the signal and shall be given the right-of-way by the drivers of all vehicles; and

(2) "WAIT" or "DON'T WALK" means no pedestrian shall start to cross the roadway in the direction of such signal, but any pedestrian who has partially completed his or her crossing on the walk signal shall proceed to a sidewalk or safety island while the wait signal is showing.

**History.** Acts 1937, No. 300, § 32; Pope's Dig., § 6690; Acts 1959, No. 307, § 24; 1961, No. 51, § 1; 1975 (Extended Sess., 1976), No. 1068, § 1; 1979, No. 104, § 1; A.S.A. 1947, § 75-505; reen. Acts 1987, No. 865, § 1; Acts 2001, No. 1606, § 1.

**A.C.R.C. Notes.** This section was reenacted by Acts 1987, No. 865, § 1. Acts

1987, No. 834, provided that 1987 legislation reenacting acts passed in the 1976 Extended Session should not repeal any other 1987 legislation and that such other legislation would be controlling in the event of conflict.

**Cross References.** Penalty for violation of 1959 amendatory act, § 27-50-305.

## CASE NOTES

### Authority.

Sections 27-52-105, 27-52-106 and this section give the direction and control of traffic located on state highways to the

State Highway Commission. *Garrison v. City of Alpena*, 234 Ark. 170, 350 S.W.2d 690 (1961).

**27-52-108. Flashing signals.**

Whenever flashing red or yellow signals are used, they shall require obedience by vehicular traffic as follows:

(1) Flashing red, which is a stop signal, means when a red lens is illuminated by rapid intermittent flashes, drivers of vehicles shall stop before entering the nearest crosswalk at an intersection or at a limit line when marked, and the right to proceed shall be subject to the rules applicable after making a stop at a stop sign; and

(2) Flashing yellow, which is a caution signal, means when a yellow lens is illuminated with rapid intermittent flashes, drivers of vehicles may proceed through the intersection or past the signal only with caution.

**History.** Acts 1937, No. 300, § 33;  
Pope's Dig., § 6691; A.S.A. 1947, § 75-  
506.

**CASE NOTES**

**Cited:** Ferrell v. Whittington, 271 Ark.  
750, 610 S.W.2d 572 (1981).

**27-52-109. Unauthorized signs, etc., prohibited — Removal.**

(a)(1) No person shall place, maintain, or display upon or in view of any highway any unauthorized sign, signal, marking, or device which purports to be or is an imitation of or resembles an official traffic control device or railroad sign or signal, or which attempts to direct the movement of traffic or which hides from view or interferes with the effectiveness of any official traffic control device, or any railroad sign or signal, and no person shall place or maintain nor shall any public authority permit upon any highway any traffic sign or signal bearing thereon any commercial advertising.

(2) This subsection shall not be deemed to prohibit the erection upon private property adjacent to highways of signs giving useful directional information or of a type that cannot be mistaken for official signs.

(b) Every such prohibited sign, signal, marking, or device is declared to be a public nuisance, and the authority having jurisdiction over the highway is empowered to remove it or cause it to be removed without notice.

**History.** Acts 1937, No. 300, § 34;  
Pope's Dig., § 6692; A.S.A. 1947, § 75-  
507.

**27-52-110. Automated enforcement device operated by a county government or a department of state government operating outside a municipality.**

(a) As used in this section:

(1) "Automated enforcement device" means a system operated by a county government or a department of state government that is operating outside of a municipality that:

(A) Uses a photo-radar device that is capable of detecting a speeding violation; and

(B) Photographs or records an image of the vehicle used in committing the violation, the operator of the vehicle, or the license plate of the vehicle; and

(2) "Municipality" means a city of the first class, a city of the second class, or an incorporated town.

(b) Except as used under subsection (c) of this section, an automated enforcement device shall not be used by a law enforcement agency of a county or a department of state government that is operating outside of a municipality to detect or enforce:

(1) A violation of the traffic laws or regulations of the State of Arkansas; or

(2) An ordinance of the municipality.

(c)(1) A county government or a department of state government that is operating outside of a municipality may use an automated enforcement device to detect and enforce a violation of traffic laws or ordinances:

(A) In a school zone; or

(B) At a railroad crossing.

(2) If a county or a department of state government that is operating outside of a municipality uses an automated enforcement device, then a certified law enforcement officer must:

(A) Be present with the automated enforcement device; and

(B) Issue the citation to the violator at the time and place of the violation.

(d) This section shall not prevent the Arkansas Highway Police Division of the Arkansas State Highway and Transportation Department from using automated enforcement devices to enforce state or federal motor carrier laws.

**History.** Acts 2005, No. 1451, § 1.

**27-52-111. Automated enforcement device operated by a municipality or a department of state government operating within the boundaries of a municipality.**

(a) As used in this section:

(1) "Automated enforcement device" means a system operated by a municipality or a department of state government that is operating within the boundaries of the municipality that:

(A) Uses a photo-radar device that is capable of detecting a speeding violation; and

(B) Photographs or records an image of the vehicle used in committing the violation, the operator of the vehicle, or the license plate of the vehicle; and



(2) "Municipality" means a city of the first class, a city of the second class, or an incorporated town.

(b) Except as used under subsection (c) of this section, an automated enforcement device shall not be used by a law enforcement agency of a municipality or a department of state government that is operating within the boundaries of the municipality to detect or enforce:

(1) A violation of the traffic laws or regulations of the State of Arkansas; or

(2) An ordinance of the municipality.

(c)(1) A municipality or a department of state government that is operating within the boundaries of the municipality may use an automated enforcement device to detect and enforce a violation of traffic laws or ordinances:

(A) In a school zone; or

(B) At a railroad crossing.

(2) If a municipality or a department of state government that is operating within the boundaries of the municipality uses an automated enforcement device, then a certified law enforcement officer must:

(A) Be present with the automated enforcement device; and

(B) Issue the citation to the violator at the time and place of the violation.

(d) This section shall not prevent the Arkansas Highway Police Division of the Arkansas State Highway and Transportation Department from using automated enforcement devices to enforce state or federal motor carrier laws.

**History.** Acts 2005, No. 1451, § 2.

## SUBCHAPTER 2 — UNIFORM SYSTEM

### SECTION.

27-52-201. Purpose.

27-52-202. Penalty.

27-52-203. Conformity to standards.

### SECTION.

27-52-204. Duty of officials.

27-52-205. Arrangement of signals.

27-52-206. Exception for motorcycles.

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**Effective Dates.** Acts 1959, No. 143,  
§ 8: Jan. 1, 1960.

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### 27-52-201. Purpose.

(a) It is the purpose of this subchapter to make uniform the use of electrical traffic control signal devices in the State of Arkansas in order to promote the public safety and welfare.

(b) All electrical traffic control signal devices used in the State of Arkansas on any public street, road, or highway shall be in conformance

with the provisions of this subchapter, and it shall be unlawful to use any device that violates the provisions of this subchapter.

**History.** Acts 1959, No. 143, § 1; A.S.A. 1947, § 75-509.

### **27-52-202. Penalty.**

Any person violating the provisions of this subchapter shall be guilty of a misdemeanor.

**History.** Acts 1959, No. 143, § 5; A.S.A. 1947, § 75-513.

### **27-52-203. Conformity to standards.**

(a) Any electrical traffic control signal device installed on any street, road, or highway in this state shall be in conformance with the standards recommended by the Institute of Transportation Engineers, approved as an American Standard by the American National Standards Institute.

(b) All traffic signals shall conform to the state manual and specifications adopted by the State Highway Commission in accordance with the requirements of §§ 27-52-104 and 27-52-106.

**History.** Acts 1959, No. 143, § 3; A.S.A. 1947, § 75-511.

### **27-52-204. Duty of officials.**

Any persons, officers, or officials charged with the duty of placing, operating, or maintaining electrical traffic control signal devices on the public streets or highways of this state shall arrange the electrical traffic control signal devices to conform with the provisions of this subchapter.

**History.** Acts 1959, No. 143, § 4; A.S.A. 1947, § 75-512.

### **27-52-205. Arrangement of signals.**

(a) Whenever traffic upon any public road, street, or highway in the State of Arkansas is controlled by electrical traffic control signal devices exhibiting more than one (1) signal lens and color per signal face according to the signal legend set out in § 27-52-107, then the number of such signal lenses and colors shall never be less than three (3): Red for "STOP", yellow for "CAUTION", and green for "GO".

(b)(1) Additional signal lenses may be added to supplement with specific indications these three (3) basic signal indications.

(2) These signal lenses and colors shall be arranged as follows:

(A) All signal lenses shall be arranged preferably in a vertical straight line in the signal face or alternatively in a horizontal straight

line in the signal face in the following order from top to bottom or from left to right:

Position	Signal Indication:
Basic Signals:	Red for "STOP"
1. Top or left	Yellow for "CAUTION"
2. Center	Green for "GO"
3. Bottom or right	Green arrows on opaque lens backgrounds:
Supplemental Signals:	Straight-through arrow
4. Next below or right	Left-turn arrow
5. Next below or right	Right-turn arrow
6. Next below or right	

(B) Traffic signals shall be defined to include all power-operated traffic-control devices, except signs, by which traffic is warned or is directed to take some specific action.

**History.** Acts 1959, No. 143, § 2; A.S.A. 1947, § 75-510.

## **27-52-206. Exception for motorcycles.**

Notwithstanding any other provision of law, if a driver of a motorcycle approaches an intersection that is controlled by a traffic-control device, the driver may proceed through the intersection on a red light only if:

- (1) The traffic-control device uses a vehicle sensor;
- (2) The vehicle sensor has failed to detect the motorcycle because of the motorcycle's size or weight; and
- (3) The driver:
  - (A) Comes to a full and complete stop at the intersection;
  - (B) Exercises due care as provided by law; and
  - (C) Proceeds with caution through the intersection when it is safe to do so.

**History.** Acts 2005, No. 1886, § 1.

## **CHAPTER 53**

### **ACCIDENTS**

#### **SUBCHAPTER.**

1. GENERAL PROVISIONS.
2. ACCIDENT REPORTS.
3. INVESTIGATIONS.
4. DAMAGE CLAIMS.



## RESEARCH REFERENCES

**Am. Jur.** 7A Am. Jur. 2d, Auto., § 289 et seq., § 397 et seq.

**C.J.S.** 60 C.J.S., Motor Veh., § 38.  
61 C.J.S., Motor Veh., § 516(19), § 517(12).

61A C.J.S., Motor Veh., § 561 et seq., § 674(1) et seq.

**U. Ark. Little Rock L.J.** Survey — Miscellaneous, 10 U. Ark. Little Rock L.J. 593.

## SUBCHAPTER 1 — GENERAL PROVISIONS

## SECTION.

27-53-101. Requirements in accidents involving death or personal injuries.

27-53-102. Accidents involving damage only to vehicle — Removal of vehicle.

27-53-103. Duty to give information, remain at the scene of an accident, and render aid.

## SECTION.

27-53-104. Notification if unattended vehicle is struck.

27-53-105. Striking fixtures upon highway.

**Effective Dates.** Acts 1937, No. 300, § 165: Mar. 23, 1937. Emergency clause provided: "It is hereby ascertained and determined by the General Assembly that the proper regulation of traffic on the highways is a necessary function of the State Government, and that the loss of life and property under the present laws creates an emergency. Therefore, this act being necessary for the immediate preservation of the public peace, health and safety, shall go into effect immediately upon its passage and approval."

Acts 1981, No. 918, § 3: Mar. 30, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that existing statutes establishing criminal penalties for hit and run accidents are conflicting and duplicating and that this Act is immediately necessary to eliminate such confusion. Therefore, an

emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1987, No. 598, § 4: emergency failed to pass. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that the practice of leaving a vehicle on a roadway after an accident can create a serious obstruction of traffic and can endanger the safety of persons traveling on our streets, roads and highways. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect upon passage and approval." Approved Apr. 4, 1987.

## RESEARCH REFERENCES

**Ark. L. Rev.** Constitutional Law — "Hit and Run" Statutes and the Privilege Against Self-Incrimination, 26 Ark. L. Rev. 81.

**U. Ark. Little Rock L.J.** Survey of Arkansas Law, Criminal Law, 1 U. Ark. Little Rock L.J. 153.

**27-53-101. Requirements in accidents involving death or personal injuries.**

(a)(1) The driver of any vehicle involved in an accident resulting in injury to or death of any person shall immediately stop the vehicle at the scene of the accident or as close thereto as possible, but shall then immediately return to and in every event shall remain at the scene of the accident until he or she has fulfilled the requirements of § 27-53-103.

(2) Every such stop shall be made without obstructing traffic more than is necessary.

(3) An accident of this nature shall include all accidents which occur upon the streets or highways, upon the parking area of private business establishments, or elsewhere throughout the state.

(b)(1) Any person failing to comply with subsection (a) of this section or with § 27-53-103 shall upon conviction be deemed guilty of a Class D felony.

(2) The Commissioner of Motor Vehicles shall revoke the driver's license or commercial driver's license of the person so convicted.

**History.** Acts 1937, No. 300, § 36; § 1; A.S.A. 1947, § 75-901; Acts 1987, No. Pope's Dig., § 6694; Acts 1981, No. 918, 88, § 1; 1995, No. 659, § 4.

**CASE NOTES****ANALYSIS**

Accomplices.  
Failure to Comply.  
Instructions.  
Manslaughter.

**Accomplices.**

No accomplice criminal responsibility results from supplying an intoxicant to one allegedly responsible as a principal for violations of §§ 5-10-104(a)(1), 5-13-204(a), or subdivision (a)(1) of this section. *Fight v. State*, 314 Ark. 438, 863 S.W.2d 800 (1993).

**Failure to Comply.**

Evidence supported the finding of jury that defendant did not comply with this section and § 27-53-103 where evidence was to the effect that defendant hurriedly left scene of accident before injured person was removed and after being requested not to do so even though his identity was known and others were rendering aid. *Barnhill v. State*, 247 Ark. 28, 444 S.W.2d 97 (1969).

Trial court did not err in finding that defendant committed two criminal violations by leaving the scene of the accident

and driving with a suspended license, under this section and §§ 27-53-103 and 27-16-303(a)(1), or in revoking defendant's suspended sentence, based on evidence that he struck a pedestrian and left the scene. *Jordan v. State*, 2009 Ark. App. 859, — S.W.3d — (2009).

**Instructions.**

A refusal to instruct on this section does not amount to prejudicial error where the failure to comply with it bears no proximate relation to the cause of the collision. *Carter v. Montgomery*, 226 Ark. 989, 296 S.W.2d 442 (1956).

Refusal to give instruction setting out subsection (a) of this section was not prejudicial error where proof showed that the young driver stopped and returned to the scene as soon as he realized what had happened and there was no showing that he failed to satisfy the requirements of § 27-53-103. *Carter v. Montgomery*, 226 Ark. 989, 296 S.W.2d 442 (1956).

Defendant was not entitled to have his proffered instruction given to the jury based on the argument that due process required the state to prove that he knew the victim had been injured and that he purposely left the scene knowing that she

had been injured as this section did not contain an element regarding defendant's knowledge of a victim's injuries. *Stivers v. State*, 354 Ark. 140, 118 S.W.3d 558 (2003).

#### **Manslaughter.**

Evidence held sufficient to support verdict and judgment for manslaughter.

*Kirkendall v. State*, 265 Ark. 853, 581 S.W.2d 341 (1979); *Booth v. State*, 26 Ark. App. 115, 761 S.W.2d 607 (1988), cert. denied, *Booth v. Arkansas*, 490 U.S. 1047, 109 S. Ct. 1956, 104 L. Ed. 2d 425 (1989).

**Cited:** *Benson v. State*, 212 Ark. 905, 208 S.W.2d 767 (1948); *Tackett v. State*, 298 Ark. 20, 766 S.W.2d 410 (1989).

### **27-53-102. Accidents involving damage only to vehicle — Removal of vehicle.**

(a)(1) The driver of any vehicle involved in an accident resulting only in damage to a vehicle which is driven or attended by any person shall immediately stop the vehicle at the scene of the accident or as close thereto as possible, but shall immediately return to and in every event shall remain at the scene of the accident until he or she has fulfilled the requirements of § 27-53-103.

(2) Every such stop shall be made without obstructing traffic more than is necessary.

(b) An accident of this nature shall include all accidents which occur upon the streets or highways, upon the parking area of private business establishments, or elsewhere throughout the state.

(c)(1) The driver shall remove his or her vehicle from the roadway, except that the driver may leave the vehicle in the roadway if the vehicle is disabled or there is a visible or apparent injury to a person.

(2) The removal of a vehicle from the roadway pursuant to this section shall not constitute an admission of liability nor a waiver of a claim for personal injury.

**History.** Acts 1937, No. 300, § 37; 902; Acts 1987, No. 88, § 2; 1987, No. 598, Pope's Dig., § 6695; A.S.A. 1947, § 75- § 1.

### **27-53-103. Duty to give information, remain at the scene of an accident, and render aid.**

(a)(1) The driver of any vehicle involved in an accident resulting in injury to or death of any person or damage to any vehicle that is driven or attended by any person shall give his or her name, address, and the registration number of the vehicle he or she is driving.

(2) Upon request and if available, the driver shall exhibit his or her driver's license or commercial driver's license to the person struck, or the driver or occupant of, or person attending, any vehicle collided with and shall render to any person injured in the accident reasonable assistance, including the transporting, or the making of arrangements for the transporting, of the person to a physician, surgeon, or hospital for medical or surgical treatment if it is apparent that treatment is necessary or if transporting is requested by the injured person.

(b)(1) The driver of any vehicle involved in an accident resulting in injury to or death of any person or damage to any vehicle that is driven or attended by any person shall remain at the scene of the accident for



a reasonable time in order to be present if the driver knows that a law enforcement agency was contacted for assistance unless it is necessary for the driver to leave the scene of the accident to render assistance as required by subdivision (a)(2) of this section.

(2) For the purpose of compliance with subdivision (b)(1) of this section, a reasonable time is not less than thirty (30) minutes.

**History.** Acts 1937, No. 300, § 38; Pope's Dig., § 6696; A.S.A. 1947, § 75-903; Acts 1995, No. 659, § 5; 2007, No. 145, § 1.

**Amendments.** The 2007 amendment inserted "remain at the scene of an acci-

dent" in the section heading; added (b); and redesignated the existing provisions as (a)(1) and (a)(2).

**Cross References.** Penalty for violation, § 27-53-101(b).

## CASE NOTES

### ANALYSIS

Failure to Comply.  
Instructions.

#### Failure to Comply.

Evidence supported the finding of jury that defendant did not comply with this section and § 27-53-101 where evidence was to the effect that defendant hurriedly left scene of accident before injured person was removed and after being requested not to do so even though his identity was known and others were rendering aid. *Barnhill v. State*, 247 Ark. 28, 444 S.W.2d 97 (1969).

Trial court did not err in finding that defendant committed two criminal violations by leaving the scene of the accident and driving with a suspended license, § 27-53-101, this section, and § 27-16-303(a)(1), or in revoking defendant's suspended sentence, based on evidence that he struck a pedestrian and left the scene. *Jordan v. State*, 2009 Ark. App. 859, — S.W.3d — (2009).

#### Instructions.

Where driver's failure to give his name and license number and render assistance

to persons injured in a collision as required by this section bears no proximate relation to the cause of the collision, instruction on that point is properly refused. *Schlosberg v. Doup*, 187 Ark. 931, 63 S.W.2d 337 (1933).

Refusal to give instruction setting out § 27-53-101(a) was not prejudicial error where proof showed that the young driver stopped and returned to the scene as soon as he realized what had happened and there was no showing that he failed to satisfy the requirements of this section. *Carter v. Montgomery*, 226 Ark. 989, 296 S.W.2d 442 (1956).

Defendant was not entitled to have his proffered instruction given to the jury based on the argument that due process required the state to prove that he knew the victim had been injured and that he purposely left the scene knowing that she had been injured as § 27-53-101 did not contain an element regarding defendant's knowledge of a victim's injuries. *Stivers v. State*, 354 Ark. 140, 118 S.W.3d 558 (2003).

## 27-53-104. Notification if unattended vehicle is struck.

(a) The driver of any vehicle which collides with any vehicle which is unattended shall immediately stop and shall then and there either locate and notify the operator or owner of the vehicle of the name and address of the driver and owner of the vehicle striking the unattended vehicle or shall leave in a conspicuous place in the vehicle struck a written notice giving the name and address of the driver and of the

owner of the vehicle doing the striking and a statement of the circumstances thereof.

(b) An accident of this nature shall include all accidents which occur upon the streets or highways, upon the parking area of private business establishments, or elsewhere throughout the state.

**History.** Acts 1937, No. 300, § 39; Pope's Dig., § 6697; A.S.A. 1947, § 75-904; Acts 1987, No. 88, § 3.

## 27-53-105. Striking fixtures upon highway.

(a) The driver of any vehicle involved in an accident resulting only in damage to fixtures legally upon or adjacent to a highway shall take reasonable steps to locate and notify the owner or person in charge of the property of that fact and of his or her name and address and of the registration number of the vehicle he or she is driving. Upon request and if available, the driver shall exhibit his or her driver's license or commercial driver's license and shall make report of the accident when and as required in § 27-53-202.

(b) An accident of this nature shall include all accidents which occur upon the streets or highways, upon the parking area of private business establishments, or elsewhere throughout the state.

**History.** Acts 1937, No. 300, § 40; 905; Acts 1987, No. 88, § 4; 1995, No. 659, Pope's Dig., § 6698; A.S.A. 1947, § 75- § 6.

## SUBCHAPTER 2 — ACCIDENT REPORTS

### SECTION.

27-53-201. Penalty.

27-53-202. Reports of accidents required — Supplemental reports.

27-53-203. Incapacity to make report.

27-53-204. Coroners to report deaths.

27-53-205. Incorporated municipalities may require reports.

27-53-206. Approved forms to be used.

### SECTION.

27-53-207. Tabulation and analysis.

27-53-208. Use of accident and supplemental reports.

27-53-209. Reports open to public inspection.

27-53-210. Copies — Fee.

27-53-211. Inspection of accident scenes for safety improvements.

**Cross References.** Accident reports, § 27-19-501 et seq.

**Preambles.** Acts 1953, No. 90 contained a preamble which read: "Whereas, the Department of Arkansas State Police has been issuing copies of reports covering motor vehicle accidents on the highways of this State; and

"Whereas, the issuing of such reports has become so numerous, and the expense and additional work incident to the preparation and certification of the many thousands of these reports requested annually

has become so great, the Department should be reimbursed therefor;

"Now, therefore...."

**Effective Dates.** Acts 1937, No. 300, § 165: Mar. 23, 1937. Emergency clause provided: "It is hereby ascertained and determined by the General Assembly that the proper regulation of traffic on the highways is a necessary function of the State Government, and that the loss of life and property under the present laws creates an emergency. Therefore, this act being necessary for the immediate preser-

vation of the public peace, health and safety, shall go into effect immediately upon its passage and approval.”

Acts 1953, No. 90, § 4: Feb. 18, 1953. Emergency clause provided: “It has been found and is hereby declared by the General Assembly of the State of Arkansas that the Department of State Police is suffering considerable expense as a result of providing photostatic copies of motor vehicle accident reports to various persons, companies and corporations for which no charge is now made, with the result that the work of the Department with respect to highway patrol and its other functions is retarded; therefore, an emergency is hereby declared to exist, and this act being necessary for the preservation of the public peace, health and safety

shall take effect and be in full force from and after its passage and approval.”

Acts 1963, No. 272, § 4: Mar. 18, 1963. Emergency clause provided: “It has been found and is hereby declared by the General Assembly of the state of Arkansas that the department of state police is suffering considerable expense as a result of providing photostatic copies of motor vehicle accident reports and records of traffic law violations to various persons, companies and corporations with the result that the work of the department with respect to highway patrol and its other functions is retarded; therefore, an emergency is hereby declared to exist, and this act being necessary for the preservation of the public peace, health and safety shall take effect and be in full force from and after its passage and approval.”

### RESEARCH REFERENCES

**ALR.** “Amnesty” provision whereby automobile driver leaving scene of accident may report to police within stated time without risk of use of his report against him. 36 A.L.R.4th 907.

**Ark. L. Rev.** Constitutional Law — “Hit and Run” Statutes and the Privilege Against Self-Incrimination, 26 Ark. L. Rev. 81.

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### 27-53-201. Penalty.

(a) Any person who fails or refuses to comply with § 27-53-202 or § 27-53-203 shall be punished upon a conviction in the county where the accident occurred by a fine of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000).

(b) For willful refusal to comply with § 27-53-202 or § 27-53-203, the Commissioner of Motor Vehicles shall revoke the driver’s license or commercial driver’s license of the person so convicted.

**History.** Acts 1937, No. 300, § 41; 1949, No. 464, § 1; A.S.A. 1947, § 75-906; Acts 1995, No. 659, § 1.

### CASE NOTES

#### Refusal to Answer Questions.

Although this section subjects to statutory fine or suspension of license to drive any motorist who fails to render a required automobile accident report, there

is no such penalty for a motorist who refuses to answer the questions of the investigating officer. *Stephens v. State*, 320 Ark. 426, 898 S.W.2d 435 (1995).



**27-53-202. Reports of accidents required — Supplemental reports.**

(a) The driver of a vehicle involved in an accident resulting in injury to or death of any person or total property damage to an apparent extent of one thousand dollars (\$1,000) or more shall notify the nearest law enforcement agency immediately. All persons involved in the accident shall make themselves readily available to the investigating agency's officer or officers.

(b)(1) In addition to the requirements of subsection (a) of this section, the driver of any taxicab, motor bus, or other motor vehicle carrying passengers for hire involved in an accident resulting in injury to or death of any person shall notify the nearest law enforcement agency immediately. The drivers of any taxicab, motor bus, or other motor vehicle carrying passengers for hire shall make themselves readily available to the investigating agency's office or officers.

(2) The accident report shall contain a full and complete list of the names and addresses of all passengers occupying the taxicab, bus, or other vehicle at the time of the accident.

(3) The report shall include provisions which inquire about whether or not the accident was caused as a result of the driver's lapse of consciousness, epileptic condition, or similar nervous disorder, or an episode of marked mental confusion or as a result of any physical disability, disease, or disorder or any other medical condition of the driver affecting the vehicle's safe operation.

(c) The Department of Arkansas State Police may require any driver of a vehicle involved in an accident that must be reported under this section to file supplemental reports whenever the original report is insufficient in the opinion of the Department of Arkansas State Police and may require witnesses of an accident to render reports to the Department of Arkansas State Police.

(d) In all traffic accidents involving motorcycles, motor-driven cycles, motorized bicycles, or any other two-wheeled or three-wheeled motor vehicle, all written reports of the accident shall be supplemented with a motorcycle traffic accident report.

**History.** Acts 1937, No. 300, § 41; 489, § 1; 1995, No. 570, § 1; 1995, No. Pope's Dig., § 6699; Acts 1949, No. 464, 659, § 2; 2003, No. 333, § 1.  
§ 1; A.S.A. 1947, § 75-906; Acts 1989, No.

**RESEARCH REFERENCES**

**U. Ark. Little Rock L. Rev** Survey of      sembly, Transportation, Reporting Acci-  
**Legislation**, 2003 Arkansas General As-      dents, 26 U. Ark. Little Rock L. Rev 503.

**27-53-203. Incapacity to make report.**

(a) Whenever the driver of a vehicle is physically incapable of reporting an accident, as required by § 27-53-202(a), and there was another occupant in the vehicle at the time of the accident capable of

making a report, the occupant shall make or cause to be made the report.

(b) Whenever the driver of any taxicab, bus, or other motor vehicle carrying passengers for hire is physically incapable of reporting an accident, as required by § 27-53-202(b), it shall be the duty of the person in charge of the nearest office of the taxicab company, bus company, or other motor vehicle public carrier to make the report or cause it to be made.

**History.** Acts 1937, No. 300, § 42; § 2; A.S.A. 1947, § 75-907; Acts 1995, No. Pope's Dig., § 6700; Acts 1949, No. 464, 659, § 3.

### **27-53-204. Coroners to report deaths.**

Every coroner, or other official performing like functions, on or before the tenth day of each month, shall report in writing to the Department of Arkansas State Police the death of any person within his or her jurisdiction during the preceding calendar month as the result of an accident involving a motor vehicle and the circumstances of the accident.

**History.** Acts 1937, No. 300, § 44; Pope's Dig., § 6702; A.S.A. 1947, § 75-909.

### **27-53-205. Incorporated municipalities may require reports.**

(a) By ordinance, any incorporated city, town, village, or other municipality may require that the driver of a vehicle involved in an accident shall also file with a designated city department a report of the accident or a copy of any report required in this subchapter to be filed with the Department of Arkansas State Police.

(b) All such reports shall be for the confidential use of the city department and subject to the provisions of § 27-53-208.

**History.** Acts 1937, No. 300, § 47; Pope's Dig., § 6705; A.S.A. 1947, § 75-912.

### **27-53-206. Approved forms to be used.**

(a)(1) The Department of Arkansas State Police shall prepare and upon request supply to police departments, coroners, sheriffs, and other suitable agencies or individuals forms for accident reports required under this subchapter.

(2)(A) The reports shall call for sufficiently detailed information to disclose with reference to a traffic accident the cause, conditions then existing, and the persons and vehicles involved.

(B) Every accident report shall include provisions which inquire about whether or not the accident was caused as a result of the driver's lapse of consciousness, epileptic condition, or similar nervous

disorder, or an episode of marked mental confusion or as a result of any physical disability, disease, or disorder or any other medical condition of the driver.

(b) Every required accident report shall be made on a form approved by the Department of Arkansas State Police.

(c) The motorcycle traffic accident report shall be made upon forms approved and supplied by the Department of Arkansas State Police, with the concurrence of the Arkansas State Highway and Transportation Department.

**History.** Acts 1937, No. 300, § 43; 908; Acts 1989, No. 489, § 2; 1995, No. Pope's Dig., § 6701; A.S.A. 1947, § 75- 570, § 2.

### **27-53-207. Tabulation and analysis.**

(a) The Department of Arkansas State Police shall tabulate and may analyze all accident reports and shall publish annually, or at more frequent intervals, statistical information based thereon as to the number and circumstances of traffic accidents.

(b) After its annual report on the number and circumstances of traffic accidents, the department shall further report to the Arkansas State Highway and Transportation Department the location of all accidents occurring within the preceding twelve-month period on the state highway system which resulted in a human fatality and where two (2) or more accidents involving a personal bodily injury occurred at the same location.

**History.** Acts 1937, No. 300, § 46; Pope's Dig., § 6704; A.S.A. 1947, § 75-911; Acts 1999, No. 1275, § 1.

### **27-53-208. Use of accident and supplemental reports.**

(a)(1) All required accident reports and supplemental reports shall be without prejudice to the individual so reporting and shall be for the use of the Department of Arkansas State Police.

(2) The Department of Arkansas State Police may disclose the identity of a person involved in an accident when the identity is not otherwise known or when the person denies his or her presence at the accident. They may disclose to any person involved in the accident or to their attorney or agent the name and address of any and all occupants and passengers in any of the vehicles involved in the accident as may be shown by the reports.

(b)(1) No report shall be used as evidence in any civil or criminal trial arising out of an accident.

(2) The Department of Arkansas State Police shall furnish the report upon the demand of any person who has made or claims to have made the report or, upon demand of any court, a certificate showing that a specified accident report has or has not been made to the Department of Arkansas State Police solely to prove a compliance or a failure to



comply with the requirement that the report be made to the Department of Arkansas State Police.

**History.** Acts 1937, No. 300, § 45; Pope's Dig., § 6703; Acts 1949, No. 464, § 3; A.S.A. 1947, § 75-910.

### CASE NOTES

#### ANALYSIS

Scope of Privilege.  
Written Report.

#### Scope of Privilege.

The automobile accident report privilege in subdivision (b)(1) of this section is expressly extended only to the report itself, and does not shield testimony of the investigating officer as to that officer's observations made in preparing his re-

port, including statements made to the officer by the motorist. *Stephens v. State*, 320 Ark. 426, 898 S.W.2d 435 (1995).

#### Written Report.

Although subdivision (b)(1) of this section does not expressly refer to a written report, the statute plainly contemplates a writing. *Stephens v. State*, 320 Ark. 426, 898 S.W.2d 435 (1995).

**Cited:** *Shock v. Tester*, 405 F.2d 852 (8th Cir. 1969).

### 27-53-209. Reports open to public inspection.

All motor vehicle accident reports made by the Department of Arkansas State Police, and its records of traffic violations, shall be open to public inspection at all reasonable times.

**History.** Acts 1953, No. 90, § 1; 1963, No. 272, § 1; A.S.A. 1947, § 75-916.

### RESEARCH REFERENCES

**Ark. L. Rev.** Watkins, Access to Public Records Under the Arkansas Freedom of Information Act, 37 Ark. L. Rev. 741.

### 27-53-210. Copies — Fee.

(a) Photostatic or written copies of reports and records may be obtained from the Director of the Department of Arkansas State Police, or from his or her duly designated assistants, by any person who shall request the Department of Arkansas State Police for them in writing.

(b)(1) In order to partially reimburse the Department of Arkansas State Police for the cost of making photostatic or written copies of motor vehicle accident reports and copies of records of traffic violations, there shall be charged a fee of ten dollars (\$10.00) for each copy of a basic accident report and a fee of one dollar and fifty cents (\$1.50) per page for each copy of a supplemental report.

(2) All funds collected under this subsection shall immediately be paid over by the Department of Arkansas State Police to the Treasurer of State and shall be credited by him or her as a special revenue to the Department of Arkansas State Police Fund.

(c)(1) In order to partially reimburse county and municipal law enforcement agencies for the cost of making copies of motor vehicle accident reports and copies of records of traffic violations, there shall be charged a fee of ten dollars (\$10.00) for each copy of a basic accident report and a fee of one dollar fifty cents (\$1.50) per page for each copy of a supplemental report.

(2) All funds collected under this subsection shall be retained by the municipality or county for the support of the law enforcement agency.

**History.** Acts 1953, No. 90, §§ 1, 2; 916, 75-917; Acts 1993, No. 606, § 1; 2005, 1963, No. 272, §§ 1, 2; A.S.A. 1947, §§ 75- No. 2158, § 1.

### RESEARCH REFERENCES

**Ark. L. Rev.** Watkins, Access to Public Records Under the Arkansas Freedom of Information Act, 37 Ark. L. Rev. 741.

### CASE NOTES

**Cited:** Southwestern Water Co. v. Merritt, 224 Ark. 499, 275 S.W.2d 18 (1955).

## 27-53-211. Inspection of accident scenes for safety improvements.

(a) It shall be the duty of the Arkansas State Highway and Transportation Department to inspect all accident locations on the state highway system in Arkansas, as reported to the Arkansas State Highway and Transportation Department by the Department of Arkansas State Police pursuant to § 27-53-207(b), where accidents which resulted in a human fatality occurred within the preceding twelve-month period and where two (2) or more accidents involving a personal bodily injury occurred at the same location. The inspections shall determine, within the judgment of Arkansas State Highway and Transportation Department personnel, whether safety improvements, increased visibility, warning signs, traffic control devices, or any other safety improvements are warranted which could reduce or prevent the future occurrence of any similar accidents at the same locations.

(b) The Arkansas State Highway and Transportation Department shall develop a schedule for and implement those safety improvements deemed warranted by that department.

**History.** Acts 1999, No. 1275, § 2.

## SUBCHAPTER 3 — INVESTIGATIONS

SECTION.  
27-53-301. Purpose.

SECTION.  
27-53-302. Definitions.

## SECTION.

27-53-303. Jurisdiction and responsibilities of law enforcement officers.

27-53-304. Report forms.

## SECTION.

27-53-305. Reports to be public records.

27-53-306. Notification to landowners.

27-53-307. Accident response service fee.

**Preambles.** Acts 1967, No. 246 contained a preamble which read: "Whereas, the soaring trend in traffic accidents and the resulting deaths, injuries, and damage to property demand an all-out effort to curtail such needless destruction, not only in Arkansas but also throughout the Nation; and

"Whereas, the Congress of the United States has recognized the seriousness of this situation, through the passage of the 1966 Highway Safety Act (Public Law 89-564) to require uniform and orderly measures in each state in an attempt to reduce traffic accidents; and, to assure compliance with the provisions of this Act, has imposed a penalty clause therein which would withhold Federal-aid high-

way funds from those states that fail to comply with the provisions of the Safety Law; and

"Whereas, the Safety Act specifically calls for an effective system of accident records and of accident investigations to determine probable causes of accidents, injuries, and deaths; and

"Whereas, adequate and full investigation and report of each traffic accident provides a basic source of information necessary to assure adequate enforcement of traffic laws and regulations; and

"Whereas, at the present time the State of Arkansas has no law requiring the investigation and reporting of all traffic accidents;

"Now, therefore...."

## CASE NOTES

### ANALYSIS

Penalty.

Reporting Privilege.

### Penalty.

Although § 27-53-201 subjects to statutory fine or suspension of license to drive any motorist who fails to render a required automobile accident report, there is no such penalty for a motorist who

refuses to answer the questions of the investigating officer. *Stephens v. State*, 320 Ark. 426, 898 S.W.2d 435 (1995).

### Reporting Privilege.

Although § 27-53-208(b)(1) grants the so-called "automobile accident report privilege," this subchapter contains no such automobile accident report privilege provision. *Stephens v. State*, 320 Ark. 426, 898 S.W.2d 435 (1995).

## 27-53-301. Purpose.

The purpose of this subchapter is to promote the public welfare by the reduction of traffic accidents and deaths, injuries, and property damage resulting from accidents and to this end require that all traffic accidents be investigated and reported by qualified law enforcement officers within their jurisdictions.

**History.** Acts 1967, No. 246, § 1; A.S.A. 1947, § 75-922.



**27-53-302. Definitions.**

As used in this subchapter, unless the context otherwise requires:

(1) "Investigating officer" means any state, county, or municipal law enforcement official within his jurisdiction;

(2) "Traffic accidents" means accidents occurring to persons, including pedestrians, motor vehicles, and animals, incidental to and as a consequence of the flow of vehicles and pedestrians along the public highways, roads, and streets of Arkansas; and

(3) "Traffic accident report" means the written report required of the investigating officer, including any later supplements, which describes the site, location, and manner of occurrence of the accident, the persons and vehicles involved, and any other pertinent data that may be useful in the determination of the causes of the accident.

**History.** Acts 1967, No. 246, § 2; A.S.A. 1947, § 75-923.

**27-53-303. Jurisdiction and responsibilities of law enforcement officers.**

(a) Within their jurisdictions, and cooperatively in overlapping jurisdictional situations such as the state highway extensions within municipal corporations, law enforcement officers of Arkansas are declared to be responsible for the investigation and reporting of all traffic accidents and the deaths, injuries, and property damage resulting therefrom.

(b) These responsibilities shall be generally as outlined:

(1) The federal interstate system — The Department of Arkansas State Police;

(2) The state highway system — The Department of Arkansas State Police and, within municipal corporations, the municipal police, except that the Department of Arkansas State Police may investigate accidents on all streets, county roads, and state highways;

(3) The municipal streets within the boundaries of a municipal corporation which are not a part of the state highway system — The municipal police in cities of the first and second class and the municipal police or the county sheriff's department in all other municipalities; and

(4) The county road system — The sheriff of that county.

(c) The responsible investigating office shall make the investigation with all possible promptness, and the investigating officer shall file the report with the Department of Arkansas State Police within five (5) days subsequent to the actual investigation.

(d) In all traffic accidents involving motorcycles, motor-driven cycles, motorized bicycles, or any other two-wheeled or three-wheeled motor vehicle, all traffic accident reports filed with the Department of Arkansas State Police shall be supplemented with a motorcycle traffic accident report.

**History.** Acts 1967, No. 246, § 3; A.S.A. 1947, § 75-924; Acts 1989, No. 489, § 3.

#### **27-53-304. Report forms.**

(a) All traffic accident investigation reports shall be made upon forms prescribed, approved, and supplied by the Department of Arkansas State Police, with the concurrence of the Arkansas State Highway and Transportation Department.

(b) The motorcycle traffic accident report shall be made upon forms approved and supplied by the Department of Arkansas State Police, with the concurrence of the Arkansas State Highway and Transportation Department.

**History.** Acts 1967, No. 246, § 4; A.S.A. 1947, § 75-925; Acts 1989, No. 489, § 4.

#### **27-53-305. Reports to be public records.**

(a) All traffic accident investigating officers' reports shall be public records and be open to public inspection at all reasonable times.

(b) Photostatic or written copies of the reports may be obtained from the Department of Arkansas State Police in the same manner and for the same fees as prescribed by § 27-53-210 for the motor vehicle accident reports made by members of the Department of Arkansas State Police.

**History.** Acts 1967, No. 246, § 5; A.S.A. 1947, § 75-926.

#### **27-53-306. Notification to landowners.**

In instances where a motor vehicle leaves a road or highway and damages the fence or other attachment to real property, the investigating officer shall notify the landowner of the accident and damage.

**History.** Acts 1981, No. 498, § 1; A.S.A. 1947, § 75-929.

#### **27-53-307. Accident response service fee.**

(a) As used in this section:

(1) "Accident response service fee" means a fee imposed for the response or investigation of a motor vehicle accident by a law enforcement agency; and

(2) "Entity" means:

(A) The state;

(B) A political subdivision of the state, including:

(i) A county;

(ii) A city;

(iii) A borough;

(iv) An incorporated town;

(v) A township; or

(vi) A home-ruled municipality; and

(C) Any governmental entity or agency or department of a governmental entity or agency.

(b) Notwithstanding any provision of law to the contrary, a person or entity shall not impose an accident response service fee on or from an insurance company, the driver or owner of a motor vehicle, or any other person.

**History.** Acts 2009, No. 973, § 1.

#### SUBCHAPTER 4 — DAMAGE CLAIMS

##### SECTION.

27-53-401. Measure of damages to motor vehicles.

27-53-402. Failure to pay small damage claims.

27-53-403. Payment of damage claim not admissible in personal injury action.

##### SECTION.

27-53-404. Liability coverage for dealer vehicles used in driver education required.

27-53-405. Funeral homes not liable for acts of private vehicle operators.

**Preambles.** Acts 1963, No. 199 contained a preamble which read: "Whereas, automobile dealers perform a great service to the State of Arkansas by furnishing motor vehicles for use in drivers education program; and

"Whereas, automobile dealers may presently be held liable for the consequences of any accident involving the dealer-owned motor vehicle during its use in the drivers education program; and

"Whereas, exemption from legal liability would encourage future participation by automobile dealers in the drivers education programs of the public schools of this State;

"Now, therefore...."

**Effective Dates.** Acts 1957, No. 283, § 4: Mar. 27, 1957.

Acts 1963, No. 199, § 3: Mar. 8, 1963. Emergency clause provided: "It is hereby found and determined by the General Assembly that the furnishing of automobiles

to public schools in this State by automobile dealers has resulted in significant savings in funds to such public schools; that every effort shall be made to encourage automobile dealers to make available automobiles to public schools to be used in driver education and other essential programs of such schools; and, it being determined that the immediate passage of this act is necessary in order to encourage the loaning of such automobiles to such public schools since it is hereby determined by the General Assembly that the possibility of damage suits arising out of the use of such automobiles while under control of the public schools jeopardizes the willingness of automobile dealers to make such automobiles available to such schools. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

#### 27-53-401. Measure of damages to motor vehicles.

In all cases involving damage to motor vehicles, the measure of damages shall be the difference between the value of the vehicle



immediately before the damage occurred and the value after the damage occurred, plus a reasonable amount of damages for loss of use of the vehicle.

**History.** Acts 1975, No. 643, § 1; A.S.A. 1947, § 75-919.1.

## CASE NOTES

### ANALYSIS

In General.  
Applicability.  
Amount Paid for Repairs.  
Cost of Repair Estimates.

#### **In General.**

The owner's testimony of the value of a car before and after an accident, plus the introduction into evidence of three repair estimates, complied with the requirements of former similar statute; the fact that the car was never repaired was immaterial. *Stipp v. Jenkins*, 239 Ark. 15, 386 S.W.2d 695 (1965) (decision under prior law).

The trial court erred in refusing to grant the defendants a directed verdict on the issue of property damages where the plaintiff only proved the value of his car before the motor vehicle accident, but failed to prove the value of his car after the damage occurred. *Martin v. Rieger*, 289 Ark. 292, 711 S.W.2d 776 (1986).

The measure of damages to automobiles is the difference in the fair market value of the automobile before and immediately after an accident; when proving damages for property that was not a total loss, the difference in fair market value may be

established by the reasonable cost of repairing the damaged property. *Zhan v. Sherman*, 323 Ark. 172, 913 S.W.2d 776 (1996).

#### **Applicability.**

This section makes no mention of loss of use being limited to vehicles which are only partially damaged, nor does it purport to exclude recovery when a vehicle is totally destroyed, or limit its application to commercial vehicles. *Fryar v. Sanders*, 301 Ark. 379, 784 S.W.2d 168 (1990).

#### **Amount Paid for Repairs.**

In the absence of other competent proof of market value, the difference in market value before and after a collision may be established by showing the amount paid in good faith for the repairs that were necessitated by the collision. *Sipes v. Munro*, 287 Ark. 244, 697 S.W.2d 905 (1985).

#### **Cost of Repair Estimates.**

Where there was no testimony on the value of the truck that was involved in a collision with a cow and there was also no direct testimony about what damage was done to the truck, the trial court erred in awarding damages which were solely based on two estimates by two mechanics on the cost of repairs. *Daughette v. Shipley*, 282 Ark. 596, 669 S.W.2d 886 (1984).

## **27-53-402. Failure to pay small damage claims.**

(a) In all cases wherein loss or damage occurs to property resulting from motor vehicle collision amounting to one thousand dollars (\$1,000) or less, and the defendant liable, without meritorious defense, shall fail to pay the loss or damage within sixty (60) days after written notice of the claim has been received, then the defendant shall be liable to pay the person entitled thereto double the amount of the loss or damage, together with a reasonable attorney's fee, which shall not be less than two hundred fifty dollars (\$250), and court costs.

(b) This liability, which is limited to damage to property, attaches when liability is denied and suit is filed.

**History.** Acts 1957, No. 283, § 1; 1981, No. 800, § 1; A.S.A. 1947, § 75-918; Acts 1987, No. 70, § 1.

## CASE NOTES

### ANALYSIS

Evidence of Notice.  
Liability Imposed.  
Measure of Damages.  
Reduction of Claim.  
"Without Meritorious Defense."

#### **Evidence of Notice.**

A carbon copy of a letter written to defendant which was introduced into evidence constituted substantial evidence of the 60-day notice required by this section. *Stipp v. Jenkins*, 239 Ark. 15, 386 S.W.2d 695 (1965).

#### **Liability Imposed.**

Where plaintiff sued and recovered verdict in the sum of \$150 under this section authorizing imposition of double liability where defendant without meritorious defense fails to pay after written notice of claim for property damage in motor vehicle collision, defendant was subject to penalty of \$150, plus attorney's fees, where he had not made timely response to letter in which plaintiff claimed damages of \$115. *Hoover v. Garrison*, 239 Ark. 899, 395 S.W.2d 19 (1965).

#### **Measure of Damages.**

Where repair bill reflected the labor and material used for repairs made necessary by a collision, it was sufficient, when considered with testimony of plaintiff motorist, himself an automobile mechanic, as to the specific replacements and repair work made on his automobile, as *prima facie* case for jury that cost of repairs equalled recoverable damages. *Slaughter v. Barrett*, 239 Ark. 957, 395 S.W.2d 552 (1965).

Repair estimates are merely evidence to be considered in determining the value of a vehicle before and after an accident and the fact that they exceed \$200 (now \$300) does not authorize a court to strike a request for double damages and attorney's fee from plaintiff's complaint. *Rouse v. Weston*, 243 Ark. 396, 420 S.W.2d 83 (1967) (decision prior to 1981 amendment).

Where plaintiff sought to recover \$101 for damage done to his station wagon in a parking lot incident, but where there was considerable difference of opinion among witnesses as to whether damages shown on the repair estimate were caused by the incident or a prior accident, the trial court did not err in awarding to plaintiff only \$50.00 in damages and in refusing to assess double damages and attorney's fees. *Bullon v. Monroe*, 260 Ark. 221, 539 S.W.2d 434 (1976).

#### **Reduction of Claim.**

A claimant whose damages exceed \$200 (now \$300) may not, by reducing his claim to that amount, bring it under this section. *Rouse v. Weston*, 243 Ark. 396, 420 S.W.2d 83 (1967) (decision prior to 1981 amendment).

#### **"Without Meritorious Defense."**

The provision relative to failure to pay claim within 60 days "without meritorious defense" relates not to issue of ultimate liability but to the failure to pay the claim within 60 days after notice and, apparently, was inserted to provide for those instances where defendant had a valid excuse for not paying within 60 days, such as failure of his insurance carrier to process the claim within that period. *Ford v. Markham*, 235 Ark. 1025, 363 S.W.2d 926 (1963).

Good faith belief of defendant that he was not negligent was not a "meritorious defense" to his failure to pay plaintiff's damages within 60 days. *Coudret v. Sanders*, 244 Ark. 995, 428 S.W.2d 243 (1968).

A determination by the fact finder that the actual loss or damage is less than the amount demanded presents defendant with a "meritorious defense" that will defeat the penalty provisions of this section. *Bullon v. Monroe*, 260 Ark. 221, 539 S.W.2d 434 (1976).

**Cited:** *Downs v. Reed*, 247 Ark. 588, 446 S.W.2d 657 (1969); *Cureton v. Friereson*, 41 Ark. App. 196, 850 S.W.2d 38 (1993).

**27-53-403. Payment of damage claim not admissible in personal injury action.**

The fact of payment of any property damage claim under this subchapter is not admissible in evidence, nor shall it be referred to in any way in any personal injury action arising from the same accident.

**History.** Acts 1957, No. 283, § 3; A.S.A. 1947, § 75-920. settlement or payment of medical expenses. Arkansas Rules of Evidence 408,

**Cross References.** Inadmissibility of 409.

**CASE NOTES**

**Cited:** Ford v. Markham, 235 Ark. 1025, 363 S.W.2d 926 (1963).

**27-53-404. Liability coverage for dealer vehicles used in driver education required.**

(a) No automobile dealer who furnishes a motor vehicle to the public schools of this state for use in a driver education program shall be held legally responsible for any injuries or property damages which result from an accident involving the dealer-owned motor vehicle during its use in a driver education program.

(b)(1) Any school district in this state using any such automobile in a driver education program shall purchase liability insurance covering the operation of the vehicle.

(2) The liability insurance shall be at least within the minimum requirements of the Motor Vehicle Safety Responsibility Act, § 27-19-101 et seq.

**History.** Acts 1963, No. 199, § 1; A.S.A. 1947, § 75-921.

**27-53-405. Funeral homes not liable for acts of private vehicle operators.**

(a) It is the purpose and intent of this section to permit funeral homes to attach magnetic signs, pennants, or other identifying signs to privately owned automobiles in a funeral procession to identify the vehicles as part of the procession without assuming any liability or responsibility for acts of the operators of the private vehicles.

(b) The operator of a private vehicle in a funeral procession who is not an employee of the funeral home in charge of the procession shall not be deemed to be an agent of the funeral home. The funeral home in charge of the procession shall not be liable for any action of the operator, notwithstanding the fact that the funeral home may have attached some form of temporary identification to the vehicle to indicate that the vehicle is a part of a funeral procession.

**History.** Acts 1973, No. 459, §§ 1, 2; A.S.A. 1947, §§ 75-927, 75-928.



## CHAPTER 54

### NONRESIDENT VIOLATOR COMPACT

#### SECTION.

27-54-101. Adoption of compact.

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**Effective Dates.** Acts 1985, No. 209,  
§ 2: Jan. 1, 1986.

#### RESEARCH REFERENCES

**U. Ark. Little Rock L.J.** Legislative  
Survey, Criminal Law, 8 U. Ark. Little  
Rock L.J. 559.

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#### 27-54-101. Adoption of compact.

The Nonresident Violator Compact of 1977, as amended and in effect on January 1, 1985, hereinafter called "the compact," is enacted into law and entered into with all other jurisdictions legally joining therein in the form substantially as follows:

#### ARTICLE I

##### Findings, Declaration of Policy and Purpose

(a) The party jurisdictions find that:

(1) In most instances, a motorist who is cited for a traffic violation in a jurisdiction other than his home jurisdiction:

(i) Must post collateral or bond to secure appearance for trial at a later date; or

(ii) If unable to post collateral or bond, is taken into custody until the collateral or bond is posted; or

(iii) Is taken directly to court for his trial to be held.

(2) In some instances, the motorist's driver's license may be deposited as collateral to be returned after he has complied with the terms of the citation.

(3) The purpose of the practices described in paragraphs (1) and (2) above is to ensure compliance with the terms of a traffic citation by the motorist who, if permitted to continue on his way after receiving the traffic citation, could return to his home jurisdiction and disregard his duty under the terms of the traffic citation.

(4) A motorist receiving a traffic citation in his home jurisdiction is permitted, except for certain violations, to accept the citation from the officer at the scene of the violation and to immediately continue on his

way after promising or being instructed to comply with the terms of the citation.

(5) The practice described in paragraph (1) above causes unnecessary inconvenience and, at times, a hardship for the motorist who is unable at the time to post collateral, furnish a bond, stand trial, or pay the fine, and thus is compelled to remain in custody until some arrangement can be made.

(6) The deposit of a driver's license as a bail bond, as described in paragraph (2) above, is viewed with disfavor.

(7) The practices described herein consume an undue amount of law enforcement time.

(b) It is the policy of the party jurisdictions to:

(1) Seek compliance with the laws, ordinances, and administrative rules and regulations relating to the operation of motor vehicles in each of the jurisdictions.

(2) Allow motorists to accept a traffic citation for certain violations and proceed on their way without delay whether or not the motorist is a resident of the jurisdiction in which the citation was issued.

(3) Extend cooperation to its fullest extent among the jurisdictions for obtaining compliance with the terms of a traffic citation issued in one jurisdiction to a resident of another jurisdiction.

(4) Maximize effective utilization of law enforcement personnel and assist court systems in the efficient disposition of traffic violations.

(c) The purpose of this compact is to:

(1) Provide a means through which the party jurisdictions may participate in a reciprocal program to effectuate the policies enumerated in paragraph (b) above in a uniform and orderly manner.

(2) Provide for the fair and impartial treatment of traffic violators operating within party jurisdictions in recognition of the motorist's right of due process and the sovereign status of a party jurisdiction.

## ARTICLE II

### Definitions

(a) In the Nonresident Violator Compact, the following words have the meaning indicated, unless the context requires otherwise:

(b) (1) "Citation" means any summons, ticket, or other official document issued by a police officer for a traffic violation containing an order which requires the motorist to respond.

(2) "Collateral" means any cash or other security deposited to secure an appearance for trial, following the issuance by a police officer of a citation for a traffic violation.

(3) "Compliance" means the act of answering a citation, summons, or subpoena through appearance at court, a tribunal, and/or payment of fines and costs.

(4) "Court" means a court of law or traffic tribunal.

(5) "Driver's license" means any license or privilege to operate a motor vehicle issued under the laws of the home jurisdiction.

(6) "Home jurisdiction" means the jurisdiction that issued the driver's license of the traffic violator.

(7) "Issuing jurisdiction" means the jurisdiction in which the traffic citation was issued to the motorist.

(8) "Jurisdiction" means a state, territory, or possession of the United States, the District of Columbia, Commonwealth of Puerto Rico, Provinces of Canada, or other countries.

(9) "Motorist" means a driver of a motor vehicle operating in a party jurisdiction other than the home jurisdiction.

(10) "Personal recognizance" means an agreement by a motorist made at the time of issuance of the traffic citation that he will comply with the terms of that traffic citation.

(11) "Police officer" means any individual authorized by the party jurisdiction to issue a citation for a traffic violation.

(12) "Terms of the citation" means those options expressly stated upon the citation.

### ARTICLE III

#### Procedure for Issuing Jurisdiction

(a) When issuing a citation for a traffic violation, a police officer shall issue the citation to a motorist who possesses a driver's license issued by a party jurisdiction and shall not, subject to the exceptions noted in paragraph (b) of this article, require the motorist to post collateral to secure appearance, if the officer receives the motorist's personal recognizance that he or she will comply with the terms of the citation.

(b) Personal recognizance is acceptable only if not prohibited by law. If mandatory appearance is required, it should take place immediately following issuance of the citation.

(c) Upon failure of a motorist to comply with the terms of a traffic citation, the appropriate official shall report the failure to comply to the licensing authority of the jurisdiction in which the traffic citation was issued. The report shall be made in accordance with procedures specified by the issuing jurisdiction and shall contain information as specified in the Compact Manual as minimum requirements for effective processing by the home jurisdiction.

(d) Upon receipt of the report, the licensing authority of the issuing jurisdiction shall transmit to the licensing authority in the home jurisdiction of the motorist, the information in a form and content as contained in the Compact Manual.

(e) The licensing authority of the issuing jurisdiction need not suspend the privilege of a motorist for whom a report has been transmitted.

(f) The licensing authority of the issuing jurisdiction shall not transmit a report on any violation if the date of transmission is more than six months after the date on which the traffic citation was issued.

(g) The licensing authority of the issuing jurisdiction shall not transmit a report on any violation where the date of issuance of the



citation predates the most recent of the effective dates of entry for the two (2) jurisdictions affected.

## ARTICLE IV

### Procedure for Home Jurisdiction

(a) Upon receipt of a report of a failure to comply from the licensing authority of the issuing jurisdiction, the licensing authority of the home jurisdiction shall notify the motorist and initiate a suspension action, in accordance with the home jurisdiction's procedures, to suspend the motorist's driver's license until satisfactory evidence of compliance with the terms of the traffic citation has been furnished to the home jurisdiction licensing authority. Due process safeguards will be accorded.

(b) The licensing authority of the home jurisdiction shall maintain a record of actions taken and make reports to issuing jurisdictions as provided in the Compact Manual.

## ARTICLE V

### Applicability of Other Laws

Except as expressly required by provisions of this compact, nothing contained herein shall be construed to affect the right of any party jurisdiction to apply any of its other laws relating to license to drive to any person or circumstance, or to invalidate or prevent any driver license agreement or other cooperative arrangements between a party jurisdiction and a nonparty jurisdiction.

## ARTICLE VI

### Compact Administrator Procedures

(a) For the purpose of administering the provisions of this compact and to serve as a governing body for the resolution of all matters relating to the operation of this compact, a Board of Compact Administrators is established. The board shall be composed of one representative from each party jurisdiction to be known as the compact administrator. The compact administrator shall be appointed by the jurisdiction executive and will serve and be subject to removal in accordance with the laws of the jurisdiction he represents. A compact administrator may provide for the discharge of his duties and the performance of his functions as a board member by an alternate. An alternate may not be entitled to serve unless written notification of his identity has been given to the board.

(b) Each member of the Board of Compact Administrators shall be entitled to one vote. No action of the board shall be binding unless taken

at a meeting at which a majority of the total number of votes on the board are cast in favor. Action by the board shall be only at a meeting at which a majority of the party jurisdictions are represented.

(c) The board shall elect annually, from its membership, a chairman and vice chairman.

(d) The board shall adopt bylaws, not inconsistent with the provisions of this compact or the laws of a party jurisdiction, for the conduct of its business and shall have the power to amend and rescind its bylaws.

(e) The board may accept for any of its purposes and functions under this compact any and all donations, and grants of money, equipment, supplies, materials, and services, conditional or otherwise, from any jurisdiction, the United States, or any other governmental agency, and may receive, utilize, and dispose of the same.

(f) The board may contract with, or accept services or personnel from any governmental or intergovernmental agency, person, firm, or corporation, or any private nonprofit organization or institution.

(g) The board shall formulate all necessary procedures and develop uniform forms and documents for administering the provisions of this compact. All procedures and forms adopted pursuant to board action shall be contained in the Compact Manual.

## ARTICLE VII

### Entry into Compact and Withdrawal

(a) This compact shall become effective when it has been adopted by at least two (2) jurisdictions.

(b) (1) Entry into the compact shall be made by a resolution of ratification executed by the authorized officials of the applying jurisdiction and submitted to the chairman of the board.

(2) The resolution shall be in a form and content as provided in the Compact Manual and shall include statements that in substance are as follows:

(i) A citation of the authority by which the jurisdiction is empowered to become a party to this compact.

(ii) Agreement to comply with the terms and provisions of the compact.

(iii) That compact entry is with all jurisdictions then party to the compact and with any jurisdiction that legally becomes a party to the compact.

(3) The effective date of entry shall be specified by the applying jurisdiction, but it shall not be less than sixty (60) days after notice has been given by the chairman of the Board of Compact Administrators or by the secretariat of the board to each party jurisdiction that the resolution from the applying jurisdiction has been received.

(c) A party jurisdiction may withdraw from this compact by official written notice to the other party jurisdictions, but a withdrawal shall

not take effect until ninety (90) days after notice of withdrawal is given. The notice shall be directed to the compact administrator of each member jurisdiction. No withdrawal shall affect the validity of this compact as to the remaining party jurisdictions.

## ARTICLE VIII

### Exceptions

The provisions of this compact shall not apply to parking or standing violations, highway weight limit violations, and violations of law governing the transportation of hazardous materials.

## ARTICLE IX

### Amendments to the Compact

(a) This compact may be amended from time to time. Amendments shall be presented in resolution form to the chairman of the Board of Compact Administrators and may be initiated by one or more party jurisdictions.

(b) Adoption of an amendment shall require endorsement of all party jurisdictions and shall become effective thirty (30) days after the date of the last endorsement.

(c) Failure of a party jurisdiction to respond to the compact chairman within one hundred twenty (120) days after receipt of the proposed amendment shall constitute endorsement.

## ARTICLE X

### Construction and Severability

This compact shall be liberally construed so as to effectuate the purposes stated herein. The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any party jurisdiction or of the United States or the applicability thereof to any government agency, person, or circumstance, the compact shall not be affected thereby. If this compact shall be held contrary to the constitution of any jurisdiction party thereto, the compact shall remain in full force and effect as to the remaining jurisdictions and in full force and effect as to the jurisdiction affected as to all severable matters.



## ARTICLE XI

## Title

This compact shall be known as the "Nonresident Violator Compact of 1977".

**History.** Acts 1985, No. 209, § 1; A.S.A. 1947, § 75-2701.

## CHAPTERS 55-63

[Reserved]

*SUBTITLE 5. HIGHWAYS, ROADS, AND STREETS*

## CHAPTER 64

## GENERAL PROVISIONS

## SUBCHAPTER

1. MISCELLANEOUS PROVISIONS.
2. ARKANSAS HIGHWAY FINANCING ACT OF 1999.
3. ARKANSAS INTERSTATE HIGHWAY FINANCING ACT OF 2005.
4. ARKANSAS INTERSTATE HIGHWAY FINANCING ACT OF 2007.

**Preambles.** Acts 1929, No. 205 contained a preamble which read: "Whereas, in many cases land owners are asking for lands required for right-of-ways for state highways, a price far in excess of the value of the lands; and

"Whereas, in a few cases the county courts have refused to procure needed right-of-way...."

**Effective Dates.** Acts 1895, No. 74, § 4: effective on passage.

Acts 1929, No. 205, § 4: approved Mar. 27, 1929. Emergency clause provided: "It is hereby ascertained and declared that the inability to secure right-of-ways for state highways and excessive cost thereof is delaying the completion of our state highway system; that the improving of our state highway system is necessary for the safety of the traveling public, so that the immediate operation of this act is essential for the protection of the public safety and an emergency is therefore declared and this act shall take effect and be in force from and after its passage."

Acts 1933, No. 3, §§ 9A, 10: Feb. 1, 1933. Emergency clause provided: "That

owing to the disastrous state of its fiscal affairs and the present uncertainty of the authority and control of the State Highway Department, the immediate necessity for setting up the proper maintenance program to preserve the millions of dollars invested in State Highways and the widespread unemployment which can be relieved in part by the proper maintenance program and by the use of available Federal funds for new highway construction, it is imperative that a new body be placed in control of the affairs of the State Highway Department and that this act become effective without delay in order to preserve the peace, and safety of the public, therefore an emergency is declared to exist, and this law shall take effect and be in force from and after its passage and approval." Approved Jan. 27, 1933.

Acts 1967, No. 405, § 3: Mar. 16, 1967. Emergency clause provided: "It is hereby found and determined by the General Assembly that the State does not have laws authorizing the State Highway department, counties, cities or towns to enter into leases, contracts or agreements with

private property owners with respect to the use of the air rights over and above such state highways, county roads, or streets of cities and towns, and that he immediate passage of this act is necessary in order to permit leases, contracts or agreements with respect to the use

thereof by owners of private property. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

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**SUBCHAPTER 1 — MISCELLANEOUS PROVISIONS**

SECTION.

27-64-101. Air rights over highways, roads, and streets — Agreements with private property owners.

SECTION.

27-64-102. Gates and cattle guards.  
27-64-103. Mowing of rights-of-way by adjoining landowners.  
27-64-104. Priority of cases.

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**A.C.R.C. Notes.** Due to the enactment of subchapter 2 by Acts 1999, No. 1027, the existing provisions of this chapter have been designated as subchapter 1.

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**27-64-101. Air rights over highways, roads, and streets — Agreements with private property owners.**

The following are authorized to enter into leases, contracts, or other agreements with the owners of private property with respect to the owners’ use of air rights over and above state highways, county roads, or streets of cities or towns, so long as the leases, contracts, or agreements do not impair the public use thereof and are not in violation of any federal requirement with respect to any federal-aid funds involved in the construction or improvement of the highways, roads, or streets:

- (1) The Arkansas State Highway and Transportation Department with respect to state highways;
- (2) The county court of each county with respect to county roads of each respective county; and
- (3) The governing bodies of cities and towns in this state with respect to city streets, alleys, and other public easements of cities and towns.

**History.** Acts 1967, No. 405, § 1; A.S.A. 1947, § 76-137.

**CASE NOTES**

**Cited:** City of Little Rock v. Linn, 245 Ark. 260, 432 S.W.2d 455 (1968).

**27-64-102. Gates and cattle guards.**

(a) Whenever any landowner of this state shall present proof to the county court that his or her land is located in a section where the land is subject to overflow, upon a proper order being entered, the landowner shall be permitted to construct a gate or cattle guard across any road traversing such lands.

(b) Before any order is entered under the provisions of this section, notice shall be given of the intention to file a petition by the landowner by inserting a notice in some newspaper in the county at least twenty (20) days before hearing is had upon the petition.

(c) Petition for a permit to construct a gate or cattle guard under this section shall be verified and supported by affidavits of at least three (3) qualified electors living near the land affected that the lands are subject to overflow and that the road referred to is a road that is not paved or a state road in the highway system and will not greatly inconvenience the traveling public.

(d) No gate or cattle guard under the provisions of this section shall be permitted or authorized which will greatly inconvenience large numbers of the traveling public, or over or across a state road in the highway system or a paved road. If after the gate or cattle guard is permitted, proof is shown that it is a hazard to the traveling public, it must be ordered removed.

(e) The order of the court shall be a complete defense against any charge or indictment of the owner for obstructing the public highway by the erection and maintaining of a gate.

(f) Any person who shall willfully leave open any gate erected and constructed in compliance with this section, which gate has been kept and maintained in good order and repair, shall be guilty of a misdemeanor, and upon conviction shall be fined in any sum not more than ten dollars (\$10.00) for each offense.

**History.** Acts 1895, No. 74, § 3, p. 98; Dig., §§ 6978-6982; A.S.A. 1947, §§ 76-1899, No. 180, § 1, p. 317; C. & M. Dig., 113 — 76-117.  
§ 5254; Acts 1937, No. 383, §§ 1-4; Pope's

**CASE NOTES****Private Roads.**

This section does not apply to private roads which the public uses by mere license. *Pierce v. Jones*, 207 Ark. 139, 179 S.W.2d 454 (1944).

**Cited:** *Missouri P. R. Co. v. Stroupe*, 237 Ark. 464, 373 S.W.2d 709 (1963).

**27-64-103. Mowing of rights-of-way by adjoining landowners.**

(a) The owners of properties which abut the rights-of-way of interstate, federal-aid primary, state, or county roads or highways in this state may enter upon and mow grass, weeds, and other vegetation on the portion of the rights-of-way adjoining their property unless the Arkansas State Highway and Transportation Department or the county



has installed barriers designed to prohibit such mowing or unless the property owners have received notice from the Arkansas State Highway and Transportation Department or the county restricting or prohibiting such mowing.

(b) If a person elects to mow the road or highway right-of-way adjoining his or her property, he or she shall do so at his or her own risk and shall have no right or claim for damages against the Arkansas State Highway and Transportation Department or any political subdivision of this state for loss of life or injury to his or her person or property while engaged in the mowing activity.

(c) In addition, the owner of the property shall perform the mowing in a manner that does not obstruct or pose danger to motorists in their lawful use of the public road or highway. He or she shall be liable for any loss, injury, or damage to the life, person, or property of motorists lawfully using the highway, which is caused by any action or negligence in connection with the mowing of the highway right-of-way.

**History.** Acts 1983, No. 661, § 1; A.S.A. 1947, § 76-145.

## 27-64-104. Priority of cases.

All cases involving the validity of this act or any portion thereof, or in any way arising under this act, shall be deemed of public interest and shall be advanced by all courts and disposed of at the earliest possible moment. Appeals from judgments or decrees involving the validity of this act or any portion thereof must be taken and perfected within thirty (30) days after the rendition of the judgment or decree.

**History.** Acts 1929, No. 65, § 73; 1929, No. 205, § 3; 1933, No. 3, § 9; Pope's Dig., §§ 6484, 6919, 6964; A.S.A. 1947, §§ 76-208, 76-512, 76-519.

**Publisher's Notes.** Acts 1933, No. 3, § 7, provided in part that the act was amendatory of and cumulative to other laws relating to the Arkansas State Highway and Transportation Department.

**Meaning of "this act".** Acts 1929, No. 65, codified as §§ 26-55-101, 27-14-305, 27-14-601, 27-15-1501 [repealed], 27-64-

104, 27-65-101, 27-65-107, 27-65-110, 27-65-112, 27-65-131 — 27-65-133, 27-67-101, 27-67-102, 27-67-201, 27-67-206 — 27-67-208, 27-67-211, 27-67-214, 27-67-218.

Acts 1929, No. 205, codified as §§ 27-64-104, 27-67-316, 27-67-320.

Acts 1933, No. 3, codified as §§ 27-64-104, 27-65-123, 27-65-129.

**Cross References.** Precedence of condemnation proceedings, § 27-67-310.

## SUBCHAPTER 2 — ARKANSAS HIGHWAY FINANCING ACT OF 1999

### SECTION.

- 27-64-201. Title.
- 27-64-202. Legislative findings.
- 27-64-203. Definitions.
- 27-64-204. Authorization — Purposes.
- 27-64-205. Projects to be financed.
- 27-64-206. Election.
- 27-64-207. Procedure for issuing bonds.
- 27-64-208. Terms of bonds.

### \* SECTION.

- 27-64-209. Sale of bonds — Employment of professionals.
- 27-64-210. Investment of proceeds.
- 27-64-211. Sources of repayment.
- 27-64-212. Refunding bonds.
- 27-64-213. Powers of commission.
- 27-64-214. Tax exemption.

**Publisher's Notes.** The Arkansas Highway Financing Act of 1999 was submitted to the voters on June 15, 1999 and passed with a vote of: 109,680 for and 28,419 against.

**Effective Dates.** Acts 1999, No. 1027, § 18: Apr. 1, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly that there is an immediate need for the construction, reconstruction and renovation of highways and roads comprising the U.S. Interstate system within the State of Arkansas and that such a program cannot be accomplished without the issuance of bonds secured by federal highway assistance payments to finance the program. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by

the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2009, No. 1480, § 117: Apr. 10, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act makes various revisions to Arkansas election laws that are designed to improve the administration of elections and special elections and that these revisions should be implemented as soon as possible so that the citizens of this state may benefit from improved election procedures. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

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## 27-64-201. Title.

This subchapter may be referred to and cited as the "Arkansas Highway Financing Act of 1999".

**History.** Acts 1999, No. 1027, § 1.

## 27-64-202. Legislative findings.

(a) The General Assembly of the State of Arkansas has determined that there is an immediate need for highway improvements as defined in this subchapter throughout the State of Arkansas in order to provide for the health, safety, and welfare of its citizens and to promote economic development within the state.

(b) The General Assembly has determined that current funding sources for highway improvements are inadequate to meet the needs of the state and that the best way to accomplish such improvements expeditiously is through the issuance of federal highway grant anticipation and tax revenue bonds to finance such highway improvements.

(c) The General Assembly has further determined that the bonds should be payable from certain designated revenues, including federal highway assistance funding and the proceeds of an increase in the excise tax on diesel fuel and that the repayment of such bonds should also be guaranteed by the full faith and credit of the state.

**History.** Acts 1999, No. 1027, § 1.

### **27-64-203. Definitions.**

The following terms, as used in this subchapter, shall have the meanings set forth in this section:

(1) “Act” means this Arkansas Highway Financing Act of 1999;

(2) “Bonds” means the “State of Arkansas Federal Highway Grant Anticipation and Tax Revenue Bonds” or “GARVEE bonds”, as authorized in this subchapter;

(3) “Commission” means the State Highway Commission, created and existing pursuant to Arkansas Constitution, Amendment 42;

(4) “Debt service” means all amounts required for the payment of principal, interest on, and premium, if any, due with respect to the bonds in any fiscal year along with all associated costs, including the fees and costs of paying agents and trustees, remarketing agent fees, credit enhancement costs, and other amounts necessary in connection with the bonds;

(5) “Designated revenues” means:

(A) That portion designated by the commission of funds received or to be received from the federal government of the United States as federal highway assistance funding allocated to the state designated as federal highway interstate maintenance funds, and, if needed, that portion of national highway system funds authorized by State Highway Commission Minute Order 98-214 adopted September 22, 1998; and

(B) Revenues derived from the increase in taxes levied on distillate special fuels pursuant to § 26-56-201 and transferred to the State Highway and Transportation Department Fund pursuant to § 27-70-207(c) in accordance with § 26-56-201 and § 26-55-1006; and

(6) “Highway improvements” or “highway improvement projects” means restoration and improvements to all of the interstate highway systems within the state, including roadways, bridges, or right-of-way under the jurisdiction of the commission and shall also include the acquisition, construction, reconstruction, and renovation of such interstate system and facilities appurtenant or pertaining thereto.

**History.** Acts 1999, No. 1027, § 2.

### **27-64-204. Authorization — Purposes.**

The State Highway Commission is hereby authorized, subject to the approval of the voters in a statewide election, to issue bonds to be known as State of Arkansas Federal Highway Grant Anticipation and Tax Revenue Bonds in a total principal amount not to exceed five hundred seventy-five million dollars (\$575,000,000) for the purpose of:

(1) Accelerating certain highway improvement projects already underway or scheduled;

(2) Funding new highway improvement projects;



(3) Financing the restoration, reconstruction, and renovation of highway improvements within the State of Arkansas; and

(4) Paying the costs of issuance of the bonds, including the costs of bond issuance or other credit enhancement.

**History.** Acts 1999, No. 1027, § 3.

### **27-64-205. Projects to be financed.**

(a) The State Highway Commission shall prepare and distribute to the Governor a report setting forth the specific highway improvement projects which would be financed if all of the authorized bonds were to be issued and the estimated cost of each project.

(b) Upon receipt of the report described in subsection (a) of this section, the Governor shall, if he or she deems it to be in the public interest, by proclamation call an election on the question of issuing the bonds.

(c) The report of projects described in subsection (a) of this section may be modified by the commission from time to time in accordance with Arkansas Constitution, Amendment 42.

**History.** Acts 1999, No. 1027, § 4.

### **27-64-206. Election.**

(a) Bonds shall not be issued under this subchapter unless the issuance of bonds has been approved by a majority of the qualified electors of the state voting on the question at a statewide special election called by proclamation of the Governor in accordance with § 7-11-201 et seq.

(b)(1)(A) Notice of such election shall be published by the Secretary of State in a newspaper of general circulation in the state at least thirty (30) days prior to such election.

(B) Notice thereof shall be mailed to each county board of election commissioners and the sheriff of each county at least sixty (60) days prior to such election.

(2)(A) The notice of election shall state that the election is to be held for the purpose of submitting to the people the following proposition in substantially the form set forth herein:

Authorizing the State Highway Commission to issue State of Arkansas Federal Highway Grant Anticipation and Tax Revenue Bonds (the "Bonds") in a total principal amount not to exceed five hundred seventy-five million dollars (\$575,000,000). If approved, such bonds will be issued in several series of various principal amounts from time to time for the purpose of paying the cost of constructing and renovating improvements to interstate highways and related facilities in the State of Arkansas.

(B) The bonds shall be general obligations of the State of Arkansas, payable from certain designated revenues and also secured by the full faith and credit of the State of Arkansas, including its general

revenues. Pursuant to this subchapter, the “Bond Act”, the bonds will be repaid first from revenues derived from federal highway assistance funding allocated to the State of Arkansas designated as federal highway interstate maintenance funds, and, if needed, that portion of national highway system funds authorized by State Highway Commission Minute Order 98-214 adopted September 22, 1998, and, second, from revenue derived from the increase in the excise tax levied on distillate special fuels and diesel pursuant § 26-56-201(e) and transferred to the State Highway and Transportation Department Fund pursuant to § 27-70-207(c) in accordance with § 26-56-201(f) and § 26-55-1006(d). To the extent that designated revenues are insufficient to make timely payment of debt service on the bonds, such payment shall be made from the general revenues of the State of Arkansas. The bonds shall be issued pursuant to the authority of and the terms set forth in this subchapter.

(C) Pursuant to this subchapter, the specific highway improvements to be financed are limited to restoration and improvements to all of the interstate highway systems within the state, including roadways, bridges, or rights-of-way under the jurisdiction of the commission, which shall also include the acquisition, construction, reconstruction, and renovation of such interstate highway systems and facilities appurtenant or pertaining thereto.

(D) Pursuant to this subchapter, “designated revenues” are defined as that portion designated by the commission of all funds received or to be received from the federal government of the United States as federal highway interstate maintenance funds, and, if needed, that portion of national highway system funds authorized by State Highway Commission Minute Order 98-214 adopted September 22, 1998, and revenues derived from the increase in taxes levied on distillate special fuels pursuant to § 26-56-201(e) and transferred to the State Highway and Transportation Department Fund pursuant to § 27-70-207(c) in accordance with § 26-56-201(f) and § 26-55-1006(d). Designated revenues shall not include the revenues derived from the increase in tax on motor fuel, gasoline, resulting from the Arkansas Distillate Special Fuel Excise Tax Act of 1999 and the Motor Fuel Excise Tax Act of 1999, §§ 26-55-1005, 26-55-1006, 26-56-201, and 27-72-305. The bonds are further secured by the full faith and credit of the State of Arkansas, and to the extent that designated revenues are insufficient to make timely payment of debt service on the bonds, the general revenues of the state shall be used to pay debt service on the bonds. Pursuant § 26-56-201, the excise tax on distillate special fuels, in addition to the taxes levied pursuant to §§ 26-56-201, 26-56-502, and 26-56-601, will increase by two cents (2¢) per gallon on the April 1, 1999, and the additional tax levied by § 26-56-201(e) shall increase to four cents (4¢) per gallon on the first anniversary of such date.

(c)(1) The ballot title shall be “Issuance of State of Arkansas Federal Highway Grant Anticipation and Tax Revenue Bonds and pledge of full faith and credit of the State of Arkansas.”



(2) On each ballot there shall be printed the title, the proposition set forth in § 27-64-206(b)(2) of this section, and the following:

FOR issuance of State of Arkansas Federal Highway Grant Anticipation and Tax Revenue Bonds in an amount not to exceed \$575,000,000 and the pledge of the full faith and credit of the State of Arkansas to further secure such bonds ..... [ ]

AGAINST issuance of State of Arkansas Federal Highway Grant Anticipation and Tax Revenue Bonds in an amount not to exceed \$575,000,000 and the pledge of the full faith and credit of the State of Arkansas to further secure such bonds ..... [ ]

(d)(1) The county boards of election commissioners in each of the several counties of the state shall hold and conduct the election, and each such board is hereby authorized and directed to take such action with respect to the appointment of election officials and such other matters as are required by the laws of the state. The vote shall be canvassed and the result thereof declared in each county by such boards.

(2) Within ten (10) days after the date of the election, the results shall be certified by such county boards to the Secretary of State, who shall forthwith tabulate all returns so received and certify to the Governor the total vote for and against the proposition submitted pursuant to this subchapter.

(e)(1) The result of the election shall be proclaimed by the Governor by the publication of such proclamation one (1) time in a newspaper of general circulation in the State of Arkansas.

(2) The results as proclaimed shall be conclusive unless a complaint challenging such results is filed within thirty (30) days after the date of such publication in the Pulaski County Circuit Court.

(f)(1) If a majority of the qualified electors voting on the proposition vote in favor of the issuance of the bonds, then the commission shall proceed with the issuance of bonds in the manner and on the terms set forth in this subchapter.

(2) If a majority of the qualified electors voting on the proposition vote against the issuance of the bonds, none of the bonds authorized by this subchapter shall be issued.

(g) Subsequent elections may be called by the Governor if the proposition fails, but each such subsequent election may be held no earlier than six (6) months after the date of the preceding election.

**History.** Acts 1999, No. 1027, § 5; The 2009 amendment substituted “§ 7-2005, No. 2145, § 76; 2007, No. 1049, 11-201 et seq.” for “§ 7-5-103(b)” in (a). § 97; 2009, No. 1480, § 116.

**Amendments.** The 2007 amendment rewrote (a).

**27-64-207. Procedure for issuing bonds.**

(a) Prior to the issuance of any series of bonds, the State Highway Commission shall adopt a resolution authorizing the issuance of such



series of bonds. Each such resolution shall contain such terms, covenants, and conditions as are deemed desirable and consistent with this subchapter, including without limitation those pertaining to the establishment and maintenance of funds and accounts, the deposit and investment of the federal highway assistance payments and bond proceeds, and the rights and obligations of the state, its officers and officials, the commission, and the registered owners of the bonds.

(b) The resolutions of the commission may provide for the execution and delivery by the commission of a trust indenture or trust indentures with one (1) or more banks or trust companies located within or without the state, containing any of the terms, covenants, and conditions referred to above and such other terms and conditions deemed necessary by the commission, which trust indenture or trust indentures shall be binding upon the commission and the state and their respective officers and officials.

**History.** Acts 1999, No. 1027, § 6.

### **27-64-208. Terms of bonds.**

The bonds shall be subject to the following terms and conditions:

(1) The bonds shall be issued in series, as set forth herein, in amounts sufficient to finance all or part of the costs of construction and maintenance of highway improvements described in § 27-64-205, with the respective series to be designated by the year in which issued and, if more than one (1) series is to be issued in a particular year, by alphabetical designation.

(2) The bonds of each series shall have such date or dates as the State Highway Commission shall determine and shall mature or be subject to mandatory sinking fund redemption over a period ending not later than twelve (12) years after the date of issue of each series.

(3)(A) The bonds of each series shall bear interest at the rate or rates determined by the commission at the sale of the bonds. The bonds may bear interest at either a fixed or a variable rate or may be convertible from one interest rate mode to another.

(B) Such interest shall be payable at such times as the commission shall determine.

(4) The bonds shall be issued in the form of bonds registered as to both principal and interest without coupons, may be in such denominations and may be made exchangeable for bonds of another form or denomination bearing the same rate of interest, may be made payable at such places within or without the state, may be made subject to redemption prior to maturity in such manner and for such redemption prices, and may contain such other terms and conditions all as the commission shall determine.

(5)(A) Each bond shall be executed with the facsimile signatures of the Chair of the State Highway Commission and the secretary of the commission and shall have affixed or imprinted thereon the seal of the commission.

(B) Delivery of the bonds so executed shall be valid notwithstanding any change in the persons holding such offices occurring after the bonds have been executed.

**History.** Acts 1999, No. 1027, § 7.

### **27-64-209. Sale of bonds — Employment of professionals.**

(a) The bonds may be sold at a price acceptable to the State Highway Commission, which price may include a discount or a premium.

(b)(1) The bonds may be sold in such manner, either at private or public sale, and upon such terms as the commission shall determine to be reasonable and expedient for effecting the purposes of this subchapter.

(2)(A) If the bonds are to be sold at public sale, the commission shall give notice of the offering of such bonds in a manner reasonably designed to notify participants in the public finance industry that such offering is being made.

(B) The commission shall set the terms and conditions of bidding, including the basis on which the winning bid will be selected.

(c)(1) The commission is authorized to structure the sale of bonds utilizing such financing techniques as are recommended by its professional advisors in order to take advantage of market conditions and obtain the most favorable interest rates consistent with the purposes of this subchapter.

(2) In furtherance of this authorization, the commission may enter into such ancillary agreements in connection with the sale of the bonds as it deems necessary and advisable, including, without limitation, bond purchase agreements, remarketing agreements, and letters of credit and reimbursement agreements.

(d) The commission is authorized to retain such professionals as it deems necessary to accomplish the issuance and sale of the bonds, including, without limitation, legal counsel, financial advisors, underwriters, trustees, paying agents, and remarketing agents.

**History.** Acts 1999, No. 1027, §§ 8, 9.

### **27-64-210. Investment of proceeds.**

Any designated revenues and any proceeds of bonds held pending disbursement on highway improvements shall be invested by the State Highway Commission to the full extent practicable pending disbursement for the purposes intended. Notwithstanding any other provision of law, such investments shall be in accordance with the terms of the resolution or trust indenture authorizing or securing the series of bonds to which the designated revenues or bond proceeds appertain to the extent that the terms of such resolution or trust indenture are applicable.

**History.** Acts 1999, No. 1027, § 11.

**27-64-211. Sources of repayment.**

(a)(1) The bonds shall be general obligations of the State of Arkansas secured and payable from the designated revenues, as defined herein, and the general revenues of the state.

(2) The bonds will be payable first from certain designated revenues, specifically:

(A) That portion designated by the State Highway Commission of funds received or to be received from the federal government of the United States as federal highway assistance funding allocated to the state designated as federal highway interstate maintenance funds, and, if needed, that portion of national highway system funds authorized by State Highway Commission Minute Order 98-214 adopted September 22, 1998; and

(B) Revenues derived from the increase in taxes levied on distillate special fuels pursuant § 26-56-201 and transferred to the State Highway and Transportation Department Fund pursuant to § 27-70-207(c) in accordance with § 26-56-201(f) and § 26-55-1006(d).

(3) To the extent that designated revenues are insufficient to make timely payment of debt service on the bonds, such payment shall be made from the general revenues of the State of Arkansas.

(b) In order to secure the payment of debt service, any trust instrument, resolution, or other document setting forth the security for the bondholders may provide for the direct payment of the federal highway assistance funds that are designated revenues directly into a trust fund or to a paying agent for the payment of debt service on the bonds, and it shall not be necessary for such funds to be deposited with the State Treasury.

**History.** Acts 1999, No. 1027, § 10.

**27-64-212. Refunding bonds.**

(a) The State Highway Commission may issue bonds for the purpose of refunding bonds previously issued pursuant to this subchapter, provided, however, that the total amount of bonds outstanding after the refunding is completed does not exceed the total amount authorized by this subchapter.

(b) Such refunding bonds shall be special obligations of the State of Arkansas, secured as set forth in this subchapter, and shall be secured and sold in accordance with the provisions of this subchapter.

**History.** Acts 1999, No. 1027, § 12.

**27-64-213. Powers of commission.**

(a) All powers granted to the State Highway Commission pursuant to this subchapter shall be deemed in addition to such powers as already exist pursuant to Arkansas Constitution, Amendment 42 and the laws of the State of Arkansas.



(b) No member of the commission shall be liable personally for any reason arising from the issuance of bonds pursuant to this subchapter unless such person shall have acted with corrupt intent.

**History.** Acts 1999, No. 1027, § 14.

### **27-64-214. Tax exemption.**

(a) All bonds issued under this subchapter and interest thereon shall be exempt from all taxes of the State of Arkansas, including income, inheritance, and property taxes.

(b) The bonds shall be eligible to secure deposits of all public funds and shall be legal for investment of municipal, county, bank, fiduciary, insurance company, and trust funds.

**History.** Acts 1999, No. 1027, § 13.

## **SUBCHAPTER 3 — ARKANSAS INTERSTATE HIGHWAY FINANCING ACT OF 2005**

### **SECTION.**

- 27-64-301. Title.
- 27-64-302. Legislative findings and intent.
- 27-64-303. Definitions.
- 27-64-304. Authorization — Purposes.
- 27-64-305. Election.
- 27-64-306. Procedure for issuing State of Arkansas Federal Highway Grant Anticipation and Tax Revenue Bonds.

### **SECTION.**

- 27-64-307. Terms of bonds.
- 27-64-308. Sale of bonds.
- 27-64-309. Employment of professionals.
- 27-64-310. Sources of repayment.
- 27-64-311. Investment of proceeds.
- 27-64-312. Refunding bonds.
- 27-64-313. Tax exemption.
- 27-64-314. Powers of the State Highway Commission.

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**Effective Dates.** Acts 2005, No. 685, § 4: Mar. 9, 2005: Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that there is an immediate need for the construction, reconstruction, and renovation of highways and roads comprising the federal interstate road system within the State of Arkansas; that a construction program cannot be accomplished without the issuance of bonds secured by federal highway assistance payments to finance the program; and that this act is immediately necessary in

order to begin the process of facilitating the issuance of bonds. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

### **27-64-301. Title.**

This subchapter may be referred to and cited as the "Arkansas Interstate Highway Financing Act of 2005".

**History.** Acts 2005, No. 685, § 1.

### **27-64-302. Legislative findings and intent.**

The General Assembly finds that:

(1) There is an immediate need for highway improvements throughout the State of Arkansas in order to provide for the health, safety, and welfare of its citizens and to promote economic development within the state;

(2) Through the revenues generated under the Arkansas Highway Financing Act of 1999, § 27-64-201 et seq., the State Highway Commission has been successful in completing the rehabilitation of much of the state's interstate highway system and that the rehabilitation has been carried out in an efficient, cost-effective manner;

(3) Continued improvement of the interstate highway system is necessary and that the best way to accomplish the improvement expeditiously is through the issuance of additional federal highway grant anticipation and tax revenue bonds to finance highway improvements;

(4) The bonds should be payable from revenues currently designated by the Arkansas Highway Financing Act of 1999, § 27-64-201 et seq., including federal highway assistance funding and available proceeds from the distillate special fuels tax levied under § 26-56-201(e); and

(5) The repayment of the bonds shall also be guaranteed by the full faith and credit of the state.

**History.** Acts 2005, No. 685, § 1.

### **27-64-303. Definitions.**

As used in this subchapter:

(1) "Bonds" means the State of Arkansas Federal Highway Grant Anticipation and Tax Revenue Bonds, also known as "GARVEE bonds", as authorized in this subchapter;

(2) "Commission" means the State Highway Commission;

(3) "Debt service" means all amounts required for the payment of principal, interest, and premium, if any, due with respect to the bonds in any fiscal year along with all associated costs, including the fees and costs of paying agents and trustees, remarketing agent fees, credit enhancement costs, and other amounts necessary in connection with the bonds;

(4) "Designated revenues" means:

(A) The portion designated by the commission of funds received or to be received from the federal government as federal highway assistance funding allocated to the state designated as federal highway interstate maintenance funds; and

(B) Revenues derived from the distillate special fuels tax levied under § 26-56-201(e) that are available for expenditure after any distributions required by the Arkansas Highway Financing Act of 1999, § 27-64-201 et seq.; and

(5) "Highway improvements" or "highway improvement projects" means restoration and improvements to all of the interstate highway systems within the state, including roadways, bridges, or rights-of-way under the jurisdiction of the commission and includes the acquisition, construction, reconstruction, and renovation of the interstate system and facilities appurtenant or pertaining to the system.

**History.** Acts 2005, No. 685, § 1.

#### **27-64-304. Authorization — Purposes.**

(a) Subject to the one-time approval of the voters in a statewide election, the State Highway Commission may issue State of Arkansas Federal Highway Grant Anticipation and Tax Revenue Bonds from time to time if the total principal amount outstanding from the issuance of the bonds, together with the total principal amount outstanding from the issuance of bonds pursuant to the Arkansas Highway Financing Act of 1999, § 27-64-201 et seq., does not at any time exceed five hundred seventy-five million dollars (\$575,000,000).

(b) The purpose of the bond issuance shall be:

- (1) Accelerating interstate highway improvement projects already underway or scheduled;
- (2) Funding new interstate highway improvement projects;
- (3) Financing the restoration, reconstruction, and renovation of interstate highway improvements within the State of Arkansas; and
- (4) Paying the costs of issuance of the bonds or other credit enhancement.

**History.** Acts 2005, No. 685, § 1.

#### **27-64-305. Election.**

(a)(1) No State of Arkansas Federal Highway Grant Anticipation and Tax Revenue Bonds shall be issued under this subchapter unless the authority of the State Highway Commission to issue the bonds from time to time is approved by a majority of the qualified electors of the state voting on the question at a statewide election called by proclamation of the Governor.

(2) The election may be in conjunction with a general election, or it may be a special election.

(b)(1) Notice of the election shall be:

(A) Published by the Secretary of State in a newspaper of general circulation in the state at least thirty (30) days prior to the election; and

(B) Mailed to each county board of election commissioners and the sheriff of each county at least sixty (60) days prior to the election.

(2) The notice of election shall state that the election is to be held for the purpose of submitting to the people the following proposition in substantially the following form:



“Authorizing the State Highway Commission to issue State of Arkansas Federal Highway Grant Anticipation and Tax Revenue Bonds (the “Bonds”) if the total principal amount outstanding from the issuance of the bonds, together with the total principal amount outstanding from the issuance of bonds pursuant to Arkansas Highway Financing Act of 1999, shall not, at any time, exceed five hundred seventy-five million dollars (\$575,000,000). If approved, the bonds will be issued in several series of various principal amounts from time to time for the purpose of paying the cost of constructing and renovating improvements to interstate highways and related facilities in the State of Arkansas.

“The bonds shall be general obligations of the State of Arkansas, payable from certain designated revenues and also secured by the full faith and credit of the State of Arkansas, including its general revenues.

“Pursuant to the Arkansas Interstate Highway Financing Act of 2005 (the “Bond Act”), the bonds will be repaid first from: (1) revenues derived from federal highway assistance funding allocated to the State of Arkansas designated as federal highway interstate maintenance funds; and (2) revenues derived from the excise tax levied on distillate special fuels (diesel) pursuant to Arkansas Code § 26-56-201(e) that are available for expenditure after any distributions required by the Arkansas Highway Financing Act of 1999. To the extent that designated revenues are insufficient to make timely payment of debt service on the bonds, the payment shall be made from the general revenues of the State of Arkansas. The bonds shall be issued pursuant to the authority of and the terms set forth in the Bond Act.

“Pursuant to the Bond Act, the highway improvements to be financed are limited to the restoration and improvements to all of the interstate highway systems within the state, including roadways, bridges, or rights-of-way under jurisdiction of the State Highway Commission, which shall also include the acquisition, construction, reconstruction, and renovation of the interstate highway systems and facilities appurtenant or pertaining thereto.

“Pursuant to the Bond Act, “designated revenues” are defined as: (1) the portion designated by the commission of funds received or to be received from the federal government of the United States as federal highway assistance funding allocated to the state designated as federal highway interstate maintenance funds; and (2) revenues derived from the distillate special fuels tax levied under Arkansas Code § 26-56-201(e) that are available for expenditure after any distributions required by the Arkansas Highway Financing Act of 1999, § 27-64-201 et seq. The bonds are further secured by the full faith and credit of the State of Arkansas, and to the extent “designated revenues” are insufficient to make timely payment of debt service on the bonds, the general revenues of the state shall be used to pay debt service on the bonds.”

(c) The ballot title shall be “Issuance of State of Arkansas Federal Highway Grant Anticipation and Tax Revenue Bonds and pledge of full faith and credit of the State of Arkansas”. On each ballot there shall be printed the title, the proposition set forth in subdivision (b)(2) of this section, and the following:

“FOR authorizing the State Highway Commission to issue State of Arkansas Federal Highway Grant Anticipation and Tax Revenue Bonds provided that the total principal amount outstanding from the issuance of the bonds, together with the total principal amount outstanding from the issuance of bonds pursuant to Arkansas Highway Financing Act of 1999, shall not, at any time, exceed five hundred seventy-five million dollars (\$575,000,000), and the pledge of the full faith and credit of the State of Arkansas to further secure the bonds ..... [ ]”

“AGAINST authorizing the State Highway Commission to issue State of Arkansas Federal Highway Grant Anticipation and Tax Revenue Bonds provided that the total principal amount outstanding from the issuance of the bonds, together with the total principal amount outstanding from the issuance of bonds pursuant to Arkansas Highway Financing Act of 1999, shall not, at any time, exceed five hundred seventy-five million dollars (\$575,000,000), and the pledge of the full faith and credit of the State of Arkansas to further secure the bonds . ..... [ ]”

(d)(1) Each county board of election commissioners shall hold and conduct the election and may take any action with respect to the appointment of election officials and other matters as required by the laws of the state.

(2) The vote shall be canvassed and the result of the vote declared in each county by the board. Within ten (10) days after the date of the election, the results shall be certified by the boards to the Secretary of State, who shall tabulate all returns received and certify to the Governor the total vote for and against the proposition submitted pursuant to this subchapter.

(e) The result of the election shall be proclaimed by the Governor by the publication of the proclamation one (1) time in a newspaper of general circulation in the State of Arkansas. The results as proclaimed shall be conclusive unless a complaint is filed within thirty (30) days after the date of the publication in Pulaski County Circuit Court challenging the results.

(f)(1) If a majority of the qualified electors voting on the proposition vote in favor of the proposition, then the commission may issue bonds from time to time in the manner and on the terms set forth in this subchapter.

(2) If a majority of the qualified electors voting on the proposition vote against the proposition, the commission shall have no authority to issue bonds.

(g) Subsequent elections may be called by the Governor if the proposition fails, but each subsequent election may be held no earlier than six (6) months after the date of the preceding election.



**History.** Acts 2005, No. 685, § 1.

**27-64-306. Procedure for issuing State of Arkansas Federal Highway Grant Anticipation and Tax Revenue Bonds.**

(a) Prior to the issuance of any series of State of Arkansas Federal Highway Grant Anticipation and Tax Revenue Bonds, the State Highway Commission shall adopt a resolution authorizing the issuance of the series of bonds.

(b) Each resolution shall contain those terms, covenants, and conditions as are deemed desirable and consistent with this subchapter, including, without limitation, those pertaining to the establishment and maintenance of funds and accounts, the deposit and investment of the federal highway assistance payments and bond proceeds, and the rights and obligations of the state, its officers and officials, the commission, and the registered owners of the bonds.

(c) The resolutions of the commission may provide for the execution and delivery by the commission of a trust indenture or trust indentures with one (1) or more banks or trust companies located within or without the state, containing any of the terms, covenants, and conditions required under subsection (b) of this section, and any other terms and conditions deemed necessary by the commission. The trust indenture or trust indentures shall be binding upon the commission and the state and their respective officers and officials.

**History.** Acts 2005, No. 685, § 1.

**27-64-307. Terms of bonds.**

The State of Arkansas Federal Highway Grant Anticipation and Tax Revenue Bonds shall be subject to the following terms and conditions:

(1) The bonds shall be issued in series in amounts sufficient to finance all or part of the costs of construction and maintenance of highway improvements. The respective series of bonds shall be designated by the year in which the bonds are issued. If more than one (1) series of bonds is to be issued in a particular year, the series shall be designated alphabetically;

(2) The bonds of each series shall have the date or dates as the State Highway Commission shall determine. The bonds shall mature or be subject to mandatory sinking fund redemption over a period ending not later than twelve (12) years after the date of issue of each series;

(3) The bonds of each series shall bear interest at the rate or rates determined by the commission at the sale of the bonds. The bonds may bear interest at either a fixed or a variable rate or may be convertible from one (1) interest rate mode to another. The interest shall be payable at the times as the commission shall determine;

(4) The bonds shall be issued in the form of bonds registered as to both principal and interest without coupons;

(5) The commission shall determine:



- (A) The denominations of the bonds;
  - (B) Whether the bonds may be made exchangeable for bonds of another form or denomination bearing the same rate of interest;
  - (C) When the bonds may be made payable and the places within or without the state where the bonds may be payable;
  - (D) Whether the bonds may be made subject to redemption prior to maturity and the manner of and prices for redemption; and
  - (E) Any other terms and conditions; and
- (6) Each bond shall be executed with the facsimile signatures of the Chair of the State Highway Commission and the secretary of the commission, and the seal of the commission shall be affixed or imprinted on the bond. Delivery of executed bonds shall be valid, notwithstanding any change in the persons holding the offices that occurs after the bonds have been executed.

**History.** Acts 2005, No. 685, § 1.

### **27-64-308. Sale of bonds.**

(a)(1) The State of Arkansas Federal Highway Grant Anticipation and Tax Revenue Bonds may be sold in any manner, either at private or public sale, and upon terms as the State Highway Commission shall determine to be reasonable and expedient for effecting the purposes of this subchapter.

(2) The bonds may be sold at a price acceptable to the commission. The price may include a discount or premium.

(b)(1) If the bonds are to be sold at public sale, the commission shall give notice of the offering of the bonds in a manner reasonably designed to notify participants in the public finance industry that the offering is being made.

(2) The commission shall set the terms and conditions of bidding, including the basis on which the winning bid will be selected.

(c) The commission may structure the sale of bonds utilizing financing techniques that are recommended by the commission's professional advisors in order to take advantage of market conditions and to obtain the most favorable interest rates consistent with the purposes of this subchapter.

(d) The commission may enter into any ancillary agreements in connection with the sale of the bonds as it deems necessary and advisable, including, without limitation, bond purchase agreements, remarketing agreements, and letter of credit reimbursement agreements.

**History.** Acts 2005, No. 685, § 1; 2007, No. 827, § 238.

**Amendments.** The 2007 amendment

substituted "letter of credit reimbursement agreements" for "letter of credit and reimbursement agreements" in (d).

**27-64-309. Employment of professionals.**

The State Highway Commission may retain any professionals it deems necessary to accomplish the issuance and sale of the State of Arkansas Federal Highway Grant Anticipation and Tax Revenue Bonds, including, without limitation, legal counsel, financial advisors, underwriters, trustees, paying agents, and remarketing agents.

**History.** Acts 2005, No. 685, § 1.

**27-64-310. Sources of repayment.**

(a) The State of Arkansas Federal Highway Grant Anticipation and Tax Revenue Bonds shall be general obligations of the State of Arkansas secured and payable from the designated revenues and the general revenues of the state.

(b) The bonds shall be payable first from the following designated revenues:

(1) The portion designated by the State Highway Commission of funds received or to be received from the federal government as federal highway assistance funding allocated to the state and designated as federal highway interstate maintenance funds; and

(2) Revenues derived from the distillate special fuels tax levied under § 26-56-201(e) that are available for expenditure after any distributions required by the Arkansas Highway Financing Act of 1999, § 27-64-201 et seq.

(c) If the amount of designated revenues is insufficient to make timely payment of debt service on the bonds, the payment shall be made from the general revenues of the State of Arkansas.

(d) In order to secure the payment of debt service, any trust instrument, resolution, or other document setting forth the security for the bondholders may provide for the direct payment of the federal highway assistance funds that are designated revenues directly into a trust fund or to a paying agent for the payment of debt service on the bonds. It shall not be necessary for the funds to be deposited into the State Treasury.

**History.** Acts 2005, No. 685, § 1.

**27-64-311. Investment of proceeds.**

(a) Any designated revenues and any proceeds of the State of Arkansas Federal Highway Grant Anticipation and Tax Revenue Bonds held pending disbursement on highway improvements shall be invested by the State Highway Commission to the full extent practicable pending disbursement for the purposes intended.

(b) Notwithstanding any other provision of law, the investments shall be in accordance with the terms of the resolution or trust indenture authorizing or securing the series of bonds to which the

designated revenues or bond proceeds appertain to the extent that the terms of the resolution or trust indenture are applicable.

**History.** Acts 2005, No. 685, § 1.

**27-64-312. Refunding bonds.**

(a) The State Highway Commission may issue bonds for the purpose of refunding the State of Arkansas Federal Highway Grant Anticipation and Tax Revenue Bonds previously issued pursuant to this subchapter if the total amount of bonds outstanding after the refunding is completed does not exceed the total amount authorized by this subchapter.

(b) The refunding bonds shall be special obligations of the State of Arkansas and shall be secured and sold in accordance with the provisions of this subchapter.

**History.** Acts 2005, No. 685, § 1.

**27-64-313. Tax exemption.**

(a) All State of Arkansas Federal Highway Grant Anticipation and Tax Revenue Bonds issued under this subchapter and interest on the bonds shall be exempt from all taxes of the State of Arkansas, including income, inheritance, and property taxes.

(b) The bonds shall be eligible to secure deposits of all public funds and shall be legal for investment of municipal, county, bank, fiduciary, insurance company, and trust funds.

**History.** Acts 2005, No. 685, § 1.

**27-64-314. Powers of the State Highway Commission.**

(a) All powers granted to the State Highway Commission under this subchapter are in addition to the powers of the commission under Arkansas Constitution, Amendment 42 and the laws of the State of Arkansas.

(b) No member of the commission shall be liable personally for any reason arising from the issuance of the State of Arkansas Federal Highway Grant Anticipation and Tax Revenue Bonds pursuant to this subchapter unless the member acts with corrupt intent.

**History.** Acts 2005, No. 685, § 1.

**SUBCHAPTER 4 — ARKANSAS INTERSTATE HIGHWAY FINANCING ACT OF 2007**

SECTION.	SECTION.
27-64-401. Title.	27-64-407. Terms of bonds.
27-64-402. Findings.	27-64-408. Sale of Bonds.
27-64-403. Definitions.	27-64-409. Employment of professionals.
27-64-404. Authorization — Purposes.	27-64-410. Sources of repayment.
27-64-405. Election.	27-64-411. Investment of proceeds.
27-64-406. Procedure for issuing bonds.	27-64-412. Refunding bonds.



## SECTION.

27-64-413. Tax Exemption.

27-64-414. Powers of State Highway  
Commission.

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**Effective Dates.** Acts 2007, No. 511, § 3: Mar. 27, 2007. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that there is an immediate need for the construction, reconstruction and renovation of highways and roads comprising the U.S. Interstate system within the State of Arkansas and that such a program cannot be accomplished without the issuance of bonds secured by federal highway assistance payments to finance the

program. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

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**27-64-401. Title.**

This subchapter may be referred to and cited as the "Arkansas Interstate Highway Financing Act of 2007".

**History.** Acts 2007, No. 511, § 1.

**27-64-402. Findings.**

(a) The General Assembly of the State of Arkansas has determined that there is an immediate need for highway improvements throughout the State of Arkansas in order to provide for the health, safety, and welfare of its citizens and to promote economic development within the state. The General Assembly has determined that through the revenues generated pursuant to the Arkansas Highway Financing Act of 1999, § 27-64-201 et seq., the State Highway Commission has been successful in completing the rehabilitation of much of the state's interstate highway system and that such rehabilitation has been carried out in an efficient, cost-effective manner. The General Assembly has determined that continued improvement of the interstate highway system is necessary and that the best way to accomplish such improvement expeditiously is through the issuance of additional federal highway grant anticipation and tax revenue bonds to finance such highway improvements.

(b) The General Assembly has further determined that the bonds should be payable from revenues currently designated by the Arkansas Highway Financing Act of 1999, § 27-64-201 et seq., including federal highway assistance funding and the proceeds from the Arkansas Distillate Special Fuel Excise Tax Act of 1999 and the Motor Fuel Excise Tax Act of 1999, §§ 26-55-1005, 26-55-1006, 26-56-201, and 27-72-305,

and that the repayment of such bonds should also be guaranteed by the full faith and credit of the state.

**History.** Acts 2007, No. 511, § 1.

### **27-64-403. Definitions.**

As used in this subchapter:

(1) “Act” shall mean this Arkansas Interstate Highway Financing Act of 2007 § 27-64-401 et seq.

(2) “Bonds” shall mean the “State of Arkansas Federal Highway Grant Anticipation and Tax Revenue Bonds” or “GARVEE bonds”, as authorized herein;

(3) “Commission” shall mean the State Highway Commission, created and existing pursuant to Arkansas Constitution, Amendment 42;

(4) “Debt service” shall mean all amounts required for the payment of principal, interest, and premium, if any, due with respect to the bonds in any fiscal year, along with all associated costs, including the fees and costs of paying agents and trustees, remarketing agent fees, credit enhancement costs, and other amounts necessary in connection with the bonds;

(5) “Designated revenues” shall mean:

(A) That portion designated by the commission of funds received or to be received from the federal government as federal highway assistance funding allocated to the state designated as federal highway interstate maintenance funds; and

(B) Revenues derived from the increase in taxes levied on distillate special fuels pursuant to the Arkansas Distillate Special Fuel Excise Tax Act of 1999 and the Motor Fuel Excise Tax Act of 1999, §§ 26-55-1005, 26-55-1006, 26-56-201, and 27-72-305; and

(6) “Highway improvements” or “highway improvement projects” shall mean restoration and improvements to all of the interstate highway system within the state, including roadways, bridges, or rights-of-way under the jurisdiction of the commission, and shall also include the acquisition, construction, reconstruction, and renovation of such interstate system and facilities appurtenant or pertaining thereto.

**History.** Acts 2007, No. 511, § 1.

### **27-64-404. Authorization — Purposes.**

The State Highway Commission is hereby authorized, subject to the approval of the voters in a statewide election, to issue bonds from time to time provided that the total principal amount outstanding from the issuance of the bonds, together with the total principal amount outstanding from the issuance of bonds pursuant to Arkansas Highway Financing Act of 1999, § 27-64-201 et seq., shall not, at any time, exceed five hundred seventy-five million dollars (\$575,000,000). The bonds will be issued in one (1) or more series of various principal

amounts with the last series being issued no later than December 31, 2015. The bonds shall be issued for the following purposes:

- (1) Accelerating interstate highway improvement projects already underway or scheduled;
- (2) Funding new interstate highway improvement projects;
- (3) Financing the restoration, reconstruction, and renovation of interstate highway improvements within the State of Arkansas; and
- (4) Paying the costs of issuance of the bonds, including the costs of bond issuance or other credit enhancement.

**History.** Acts 2007, No. 511, § 1; 2009, substituted “2015” for “2013” in the introductory language.  
No. 153, § 1.

**Amendments.** The 2009 amendment

### **27-64-405. Election.**

(a) No bonds shall be issued under this act unless the authority of the State Highway Commission to issue such bonds is approved by a majority of the qualified electors of the state voting on the question at a statewide election called by proclamation of the Governor. Such election may be in conjunction with a general election or it may be a special election. Notice of such election shall be published by the Secretary of State in a newspaper of general circulation in the state at least thirty (30) days prior to such election, and notice thereof shall be mailed to each county board of election commissioners and the sheriff of each county at least sixty (60) days prior to such election.

(b) The notice of election shall state that the election is to be held for the purpose of submitting to the people the following proposition in substantially the form set forth in this subsection:

“Authorizing the State Highway Commission to issue State of Arkansas Federal Highway Grant Anticipation and Tax Revenue Bonds (the ‘Bonds’) from time to time provided that the total principal amount outstanding from the issuance of such bonds, together with the total principal amount outstanding from the issuance of bonds pursuant to the Arkansas Highway Financing Act of 1999, § 27-64-201 et seq., shall not, at any time, exceed five hundred seventy-five million dollars (\$575,000,000). If approved, the bonds will be issued in one or more series of various principal amounts with the last series being issued no later than December 31, 2015. The bonds shall be issued for the purpose of paying the cost of constructing and renovating improvements to interstate highways and related facilities in the State of Arkansas.

“The bonds shall be general obligations of the State of Arkansas, payable from certain designated revenues and also secured by the full faith and credit of the State of Arkansas, including its general revenues. Pursuant to the Arkansas Interstate Highway Financing Act of 2007 (the ‘Bond Act’), § 27-64-401 et seq., the bonds will be repaid first from: (1) revenues derived from federal highway assistance funding allocated to the State of Arkansas designated as federal highway interstate maintenance funds, and (2) revenue derived from the increase in the



excise tax levied on distillate special fuels (diesel) pursuant to § 26-56-201(e) and transferred to the State Highway and Transportation Department Fund pursuant to § 27-70-207(c) in accordance with § 26-55-1006(d). To the extent that designated revenues are insufficient to make timely payment of debt service on the bonds, such payment shall be made from the general revenues of the State of Arkansas. The bonds shall be issued pursuant to the authority of and the terms set forth in the Bond Act, § 27-64-401 et seq.

“Pursuant to the Bond Act, § 27-64-401 et seq., the highway improvements to be financed are limited to the restoration and improvements to all of the interstate highway system within the state, including roadways, bridges, or rights-of-way under jurisdiction of the State Highway Commission, which shall also include the acquisition, construction, reconstruction, and renovation of such interstate highway system and facilities appurtenant or pertaining thereto.

“Pursuant to the Bond Act, § 27-64-401 et seq., ‘designated revenues’ are defined as: (1) that portion designated by the commission of all funds received or to be received from the federal government as federal highway interstate maintenance funds, and (2) revenues derived from the increase in taxes levied on distillate special fuels pursuant to § 26-56-201(e) and transferred to the State Highway and Transportation Department Fund pursuant to Arkansas Code § 27-70-207(c) in accordance with § 26-55-1005(d). Designated revenues shall not include the revenues derived from the increase in tax on motor fuel (gasoline) resulting from the ‘Arkansas Distillate Special Fuel Excise Tax Act of 1999’ and the ‘Motor Fuel Excise Tax Act of 1999’, §§ 26-55-1005, 26-55-1006, 26-56-201, and 27-72-305. The bonds are further secured by the full faith and credit of the State of Arkansas, and to the extent ‘designated revenues’ are insufficient to make timely payment of debt service on the bonds, the general revenues of the state shall be used to pay debt service on the bonds.”

(c) The ballot title shall be “Issuance of State of Arkansas Federal Highway Grant Anticipation and Tax Revenue Bonds and pledge of full faith and credit of the State of Arkansas.” On each ballot there shall be printed the title, the proposition set forth in § 27-64-406, and the following:

“FOR authorizing the State Highway Commission to issue State of Arkansas Federal Highway Grant Anticipation and Tax Revenue Bonds from time to time provided that the total principal amount outstanding from the issuance of such bonds, together with the total principal amount outstanding from the issuance of bonds pursuant to the Arkansas Highway Financing Act of 1999, Arkansas Code § 27-64-201 et seq., shall not, at any time, exceed five hundred seventy-five million dollars (\$575,000,000); such bonds to be issued in one or more series of various principal amounts, with the last series being issued no later than December 31, 2015, and to be secured by the full faith and credit of the State of Arkansas .....[ ]”

“AGAINST authorizing the State Highway Commission to issue State of Arkansas Federal Highway Grant Anticipation and Tax Rev-

enue Bonds from time to time provided that the total principal amount outstanding from the issuance of such bonds, together with the total principal amount outstanding from the issuance of bonds pursuant to the Arkansas Highway Financing Act of 1999, Arkansas Code § 27-64-201 et seq., shall not, at any time, exceed five hundred seventy-five million dollars (\$575,000,000); such bonds to be issued in one or more series of various principal amounts, with the last series being issued no later than December 31, 2015, and to be secured by the full faith and credit of the State of Arkansas .....[ ]”

(d) The county boards of election commissioners in each of the several counties of the state shall hold and conduct the election, and each such board is hereby authorized and directed to take such action with respect to the appointment of election officials and such other matters as is required by the laws of the state. The vote shall be canvassed and the result thereof declared in each county by such boards. The results shall, within ten (10) days after the date of the election, be certified by such county boards to the Secretary of State, who shall forthwith tabulate all returns so received and certify to the Governor the total vote for and against the proposition submitted pursuant to this act.

(e) The result of the election shall be proclaimed by the Governor by the publication of such proclamation one (1) time in a newspaper of general circulation in the State of Arkansas, and the results as proclaimed shall be conclusive unless a complaint is filed within thirty (30) days after the date of such publication in the Pulaski County Circuit Court challenging such results.

(f) If a majority of the qualified electors voting on the proposition vote in favor of the proposition, then the commission shall be authorized to issue bonds in the manner and on the terms set forth in this act. If a majority of the qualified electors voting on the proposition vote against the proposition, the commission shall have no such authority. Subsequent elections may be called by the Governor if the proposition fails, but each such subsequent election may be held no earlier than six (6) months after the date of the preceding election.

**History.** Acts 2007, No. 511, § 1; 2009, No. 153, § 2; 2009, No. 483, § 6.

**Amendments.** The 2009 amendment by No. 153 substituted “2015” for “2013” twice in (b) and once in (c); made a minor punctuation change in the introductory language of (c); and made minor stylistic changes throughout (b) and (c).

The 2009 amendment by No. 483, in (b), divided the fourth paragraph of the notice form so that each sentence became a separate paragraph, inserted additional statutory references in two of the new paragraphs, and made related and minor stylistic changes throughout (b).

**27-64-406. Procedure for issuing bonds.**

Prior to the issuance of any series of bonds, the State Highway Commission shall adopt a resolution authorizing the issuance of such series of bonds. Each such resolution shall contain such terms, covenants, and conditions as are deemed desirable and consistent with this



act, including without limitation, those pertaining to the establishment and maintenance of funds and accounts, the deposit and investment of the federal highway assistance payments and bond proceeds, and the rights and obligations of the state, its officers and officials, the commission, and the registered owners of the bonds. The resolutions of the commission may provide for the execution and delivery by the commission of a trust indenture or trust indentures, with one (1) or more banks or trust companies located within or without the state, containing any of the terms, covenants, and conditions referred to above and such other terms and conditions deemed necessary by the commission, which trust indenture or trust indentures shall be binding upon the commission and the state and their respective officers and officials.

**History.** Acts 2007, No. 511, § 1.

### **27-64-407. Terms of bonds.**

The bonds shall be subject to the following terms and conditions:

(1) The bonds shall be issued in series, as set forth herein, in amounts sufficient to finance all or part of the costs of construction and maintenance of highway improvements described in § 27-64-404 with the respective series to be designated by the year in which issued and, if more than one (1) series is to be issued in a particular year, by alphabetical designation;

(2) The bonds of each series shall have such date or dates as the State Highway Commission shall determine and shall mature or be subject to mandatory sinking fund redemption over a period ending not later than twelve (12) years after the date of issue of each series;

(3) The bonds of each series shall bear interest at the rate or rates determined by the commission at the sale of the bonds. The bonds may bear interest at either a fixed or a variable rate, or may be convertible from one (1) interest rate mode to another, and such interest shall be payable at such times as the commission shall determine;

(4) The bonds shall be issued in the form of bonds registered as to both principal and interest without coupons; may be in such denominations; and may be made exchangeable for bonds of another form or denomination, bearing the same rate of interest; may be made payable at such places within or without the state; may be made subject to redemption prior to maturity in such manner and for such redemption prices; and may contain such other terms and conditions, all as the commission shall determine; and

(5) Each bond shall be executed with the facsimile signatures of the Chair of the State Highway Commission and the secretary of the commission and shall have affixed or imprinted thereon the seal of the commission. Delivery of the bonds so executed shall be valid, notwithstanding any change in the persons holding such offices occurring after the bonds have been executed.

**History.** Acts 2007, No. 511, § 1.



**27-64-408. Sale of Bonds.**

(a) The bonds may be sold in such manner, either at private or public sale, and upon such terms as the State Highway Commission shall determine to be reasonable and expedient for effecting the purposes of this act. The bonds may be sold at a price acceptable to the commission, which price may include a discount or a premium.

(b) If the bonds are to be sold at public sale, the commission shall give notice of the offering of such bonds in a manner reasonably designed to notify participants in the public finance industry that such offering is being made. The commission shall set the terms and conditions of bidding, including the basis on which the winning bid will be selected.

(c) The commission is authorized to structure the sale of bonds utilizing such financing techniques as are recommended by its professional advisors in order to take advantage of market conditions and obtain the most favorable interest rates consistent with the purposes of this subchapter. In furtherance of this authorization, the commission may enter into such ancillary agreements in connection with the sale of the bonds as it deems necessary and advisable, including without limitation, bond purchase agreements, remarketing agreements, and letter of credit and reimbursement agreements.

**History.** Acts 2007, No. 511, § 1.

**27-64-409. Employment of professionals.**

The State Highway Commission is authorized to retain such professionals as it deems necessary to accomplish the issuance and sale of the bonds, including without limitation, legal counsel, financial advisors, underwriters, trustees, paying agents, and remarketing agents.

**History.** Acts 2007, No. 511, § 1.

**27-64-410. Sources of repayment.**

The bonds shall be general obligations of the State of Arkansas secured and payable from the designated revenues, as defined herein, and the general revenues of the state. The bonds will be payable first from certain designated revenues, specifically: (1) that portion designated by the State Highway Commission of funds received or to be received from the federal government as federal highway assistance funding allocated to the state designated as federal highway interstate maintenance funds, and (2) revenues derived from the increase in taxes levied on distillate special fuels pursuant to section 2 of the “Arkansas Distillate Special Fuel Excise Tax Act of 1999” and the “Motor Fuel Excise Tax Act of 1999”, §§ 26-55-1005, 26-55-1006, 26-56-201, and 27-72-305 and transferred to the State Highway and Transportation Department Fund pursuant to § 27-70-207(c) in accordance with § 26-55-1005(d). To the extent that designated revenues are insufficient to

make timely payment of debt service on the bonds, such payment shall be made from the general revenues of the State of Arkansas. In order to secure the payment of debt service, any trust instrument, resolution, or other document setting forth the security for the bondholders may provide for the direct payment of the federal highway assistance funds that are designated revenues directly into a trust fund, or to a paying agent, for the payment of debt service on the bonds and it shall not be necessary for such funds to be deposited into the State Treasury.

**History.** Acts 2007, No. 511, § 1.

### **27-64-411. Investment of proceeds.**

Any designated revenues and any proceeds of bonds held pending disbursement on highway improvements, shall be invested by the State Highway Commission to the full extent practicable pending disbursement for the purposes intended. Notwithstanding any other provision of law, such investments shall be in accordance with the terms of the resolution or trust indenture authorizing or securing the series of bonds to which said designated revenues or bond proceeds appertain to the extent the terms of such resolution or trust indenture are applicable.

**History.** Acts 2007, No. 511, § 1.

### **27-64-412. Refunding bonds.**

(a) The State Highway Commission may issue bonds for the purpose of refunding bonds previously issued pursuant to this subchapter; provided, however, that such bonds are not issued after December 31, 2015, and that the total amount of bonds outstanding after the refunding is completed does not exceed the total amount authorized by this subchapter.

(b) Such refunding bonds shall be special obligations of the State of Arkansas, secured as set forth herein, and shall be secured and sold in accordance with the provisions of this subchapter.

**History.** Acts 2007, No. 511, § 1; 2009, No. 153, § 3.

**Amendments.** The 2009 amendment substituted “2015” for “2013” in (a).

### **27-64-413. Tax Exemption.**

All bonds issued under this subchapter and interest thereon shall be exempt from all taxes of the State of Arkansas, including income, inheritance, and property taxes. The bonds shall be eligible to secure deposits of all public funds, and shall be legal for investment of municipal, county, bank, fiduciary, insurance company, and trust funds.

**History.** Acts 2007, No. 511, § 1.

**27-64-414. Powers of State Highway Commission.**

All powers granted to the State Highway Commission pursuant to this subchapter shall be deemed in addition to such powers as already exist pursuant to Arkansas Constitution, Amendment 42 and the laws of the State of Arkansas. No member of the commission shall be liable personally for any reason arising from the issuance of bonds pursuant to this act unless such person shall have acted with corrupt intent.

**History.** Acts 2007, No. 511, § 1.

**CHAPTER 65**

**ARKANSAS STATE HIGHWAY  
AND TRANSPORTATION  
DEPARTMENT — STATE  
HIGHWAY COMMISSION**

**SECTION.**

- 27-65-101. Penalties.
- 27-65-102. Administration of department.
- 27-65-103. Office locations.
- 27-65-104. Members.
- 27-65-105. Organization.
- 27-65-106. Meetings.
- 27-65-107. Powers and duties generally.
- 27-65-108. Agreements for promoting highway programs.
- 27-65-109. Transfer agreements.
- 27-65-110. Records and reports.
- 27-65-111. Purchase of equipment and supplies.
- 27-65-112. Acceptance of federal aid.
- 27-65-113. Relocation assistance.
- 27-65-114. Tourist information bureaus.
- 27-65-115. Use of federal aid funds for turnpike projects.
- 27-65-116 — 27-65-121. [Reserved.]
- 27-65-122. Director of State Highways and Transportation.
- 27-65-123. Secretary.
- 27-65-124. Personnel.
- 27-65-125. Accountants.
- 27-65-126. Engineers.

**SECTION.**

- 27-65-127. [Repealed.]
- 27-65-128. Investigations and reports by engineer and geologist.
- 27-65-129. Oaths.
- 27-65-130. Bonds — Commissioner and director.
- 27-65-131. Bonds — Suppliers and employees.
- 27-65-132. Contracts between commission and employees.
- 27-65-133. Corruption in office.
- 27-65-134. Venue in suits against state highway officers.
- 27-65-135. Fiscal year.
- 27-65-136. Prohibition on increasing number of employees before election.
- 27-65-137. Special expense allowances.
- 27-65-138. Acquisition of property.
- 27-65-139. Uniform allowance.
- 27-65-140. Tool allowance.
- 27-65-141. Payment of claims for damages to personal property.
- 27-65-142. Moving expense.
- 27-65-143. Award of pistol upon retirement.
- 27-65-144. Additional annual reporting.

**Publisher's Notes.** Acts 1989 (1st Ex. Sess.), No. 67, § 23, effective July 1, 1989, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the Transportation Regulatory Board and the Transportation Safety Agency and transferred their pow-

ers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively.

Acts 1989 (1st Ex. Sess.), No. 153, § 2, provided: "On and after the effective date



of this Act, the Transportation Safety Agency shall cease to exist, and all authority, rights, powers, duties, records, property, unexpended balances of appropriations, allocations or other funds, privileges and jurisdiction of the Transportation Safety Agency, now prescribed by Sections 1 and 2 of Act 572 of 1987 and other laws of this State, including, but not limited to, the regulation of transportation for compensation, safety of operation of public carriers, the highway safety program authorized by Act 161 of 1967 or Arkansas Code Annotated § 27-73-101, et seq., certification and review of assessment for ad valorem taxation, and matters concerning rates, charges, and services of such carriers, are hereby expressly conferred upon the Arkansas State Highway and Transportation Department as fully as if so named in any law or laws of this State and are hereby transferred to said Department; all orders heretofore issued by the Transportation Safety Agency shall remain in full force and effect; all actions, proceedings and hearings of whatsoever nature, then or hereafter pending before the said Transportation Safety Agency shall be transferred to the Arkansas State Highway and Transportation Department in the same manner and subject to the same incident and with the same results as though they had originated with the Arkansas State Highway and Transportation Department, and all orders, actions, proceedings and hearings of whatsoever nature then or hereafter pending in the name of the Transportation Safety Agency shall survive and be continued, heard and determined by and in the name of the Arkansas State Highway and Transportation Department; and no rights, privileges, immunities or appropriations made, given or granted to or on behalf of the Transportation Safety Agency shall lapse or be lost by reason of such change of agencies, but shall be conferred, transferred and imposed on the Arkansas State Highway and Transportation Department, and all furniture, fixtures, supplies, books, records, reports, equipment and funds derived from whatever source belonging to the Transportation Safety Agency shall be delivered to the Arkansas State Highway and Transportation Department and become its property. The Arkansas State Highway and Transportation Department

is hereby authorized to expend monies from the State Highway Department Fund, as such funds may be appropriated to the Department, for the purposes of fulfilling the duties herein transferred to said Department. Wherever the words "Arkansas Transportation Commission" or "Transportation Safety Agency" are used in any provision of the Code, the Acts of Arkansas or any statute, directive, rule or regulation, they shall be hereafter held and taken to mean the Arkansas State Highway and Transportation Department."

**Preambles.** Acts 1977, No. 192 contained a preamble which read: "Whereas, the present and the future well-being and mobility of the citizens of the State of Arkansas are dependent upon the universal availability of balanced transportation services coordinating public and private facilities and systems to assure adequate, safe, economical, and efficient transportation; and

"Whereas, Arkansas is a large uncrowded state uniformly rich in natural resources, which is uniquely and best served by highway, road and street transport facilities; and

"Whereas, the low population density is an asset of great value in the context of the Arkansas socio-economic structure and a strongly contributing factor in the State's freedom from many of the burdensome socio-economic problems of the more populous, highly industrialized States; and

"Whereas, the demographic/geographic interface between population and area is and will continue to be predominantly dependent on an adequate highway, road and street network as the foundation for the multi-modal transport functions upon which contemporary socio-economic structures depend;

"Now, therefore...."

Acts 1979, No. 932 contained a preamble which read: "Whereas, Amendment 42 to the Arkansas Constitution which creates the Arkansas Highway Commission and prescribes the qualifications and manner of appointment of members of the Commission, provides that the Commission shall be composed of five members to be appointed from the State at large but further provides that no two commissioners shall be appointed from a single congressional district; and

"Whereas, since the number of congressional districts in the State has been reduced to four since the enactment of Amendment 42, it is impossible to comply strictly with the provisions of the Amendment because with five members appointed from the four congressional districts, two members of the Commission would certainly have to be residents of the same district; and

"Whereas, the General Assembly determines that it was the purpose of the people in enacting Amendment 42 to assure that members of the Commission were from various areas of the State and that no particular area would have disproportionate representation on the Commission; and

"Whereas, in view of the reduction in the number of congressional districts, it appears necessary that legislation be enacted to clarify the residence requirements for persons appointed to the Arkansas Highway Commission;

"Now, therefore...."

**Effective Dates.** Acts 1913, No. 302, § 86: effective on passage. Emergency declared. Approved Mar. 31, 1913.

Acts 1927, No. 112, § 21: approved Mar. 4, 1927. Emergency clause provided: "It is ascertained and hereby declared that the handling of road revenues as provided in this act is essential to the maintenance and hasty repair of the public roads of the state; that the defective condition of the public roads referred to in this act is a standing menace to the traveling public, endangering their safety, and that the immediate operation of this act is essential for the protection of the public safety; and an emergency is therefore declared, and this act shall take effect and be in force from and after its passage."

Acts 1929, No. 65, § 75: approved Feb. 28, 1929. Emergency clause provided: "It is ascertained and hereby declared that the defective condition of the public roads is a standing menace to the traveling public; that the repairs of the present public roads, and the construction of the roads contemplated by this act, are necessary for the safety of the traveling public, so that the immediate operation of the act is essential for the protection of the public safety, and an emergency is therefore declared; and this act shall take effect and be in force from and after its passage."

Acts 1933, No. 3, §§ 9A, 10: Feb. 1, 1933. Emergency clause provided: "That owing to the disastrous state of its fiscal affairs and the present uncertainty of the authority and control of the State Highway Department, the immediate necessity for setting up the proper maintenance program to preserve the millions of dollars invested in State Highways and the widespread unemployment which can be relieved in part by the proper maintenance program and by the use of available Federal funds for new highway construction, it is imperative that a new body be placed in control of the affairs of the State Highway Department and that this act become effective without delay in order to preserve the peace, and safety of the public, therefore an emergency is declared to exist, and this law shall take effect and be in force from and after its passage and approval." Approved Jan. 27, 1933.

Acts 1933, No. 50, § 3: approved Feb. 22, 1933. Emergency clause provided: "It is ascertained and declared that in the construction of highways of this State, many contractors are nonresidents and that laborers and employees engaged in the construction of said highways by said contractors are often injured, property is damaged, and obligations incurred by said contractors, who later remove their property from the County without paying same, and that it would be an imposition and a burden upon the citizens of the State if required to file suits to recover accounts due them, or for damages to person or property in Pulaski County only, or in another state, and that under the emergency Federal aid appropriation, all contracts must be completed not later than July 1933, and that the immediate operation of this act is essential for the protection of citizens of this State. An emergency is therefore declared, and this act shall take effect and be in force from and after its passage."

Acts 1933, No. 92, § 5: approved Mar. 1, 1933. Emergency clause provided: "It is hereby found that on account of the depleted finances of the State Highway Department, that it is necessary to reorganize the department, and materially reduce the personnel thereof, as well as reduce the salaries of said personnel; and that at the present time the fiscal year of the Highway Department is different from that of all other Departments of the State,



which results in a great deal of confusion and duplication of efforts; and that the Highway Department is without funds with which to secure the license upon its motor vehicles, and the securing of each motor vehicle license entails an expense of \$0.35 which might be saved by the department; Therefore, an emergency is hereby declared and this act being necessary for the preservation of the public peace, health and safety shall take effect and be in force from and after its passage."

Acts 1938 (1st Ex. Sess.), No. 14, § 3: approved Apr. 1, 1938. Emergency clause provided: "It is found by the General Assembly that the highways of this State are in such condition that they are in immediate need of funds for their maintenance and repair; that the condition of the said highways constitutes a menace to the traveling public and that such condition can be remedied only by the immediate use of funds by the Highway Department for such maintenance and repair. Therefore, for the preservation of the public peace, health and safety, an emergency is declared to exist and this Act shall take effect and be in full force from and after its passage."

Acts 1947, No. 103, § 2: approved Feb. 19, 1947. Emergency clause provided: "It is hereby ascertained and declared that the conditions of the state roads and highways are due in part at least to the fact that several key positions in the highway department are held by persons untrained in the engineering profession or in highway practices; that relief herein provided is imperative for the immediate preservation of public peace, health and safety; and for said reasons it is hereby declared that an emergency exists and that this act shall take effect and be in full force from and after its passage."

Acts 1949, No. 251, § 3: Mar. 8, 1949. Emergency clause provided: "Whereas, the State of Arkansas by and with the approval of the people of the State of Arkansas is embarking upon a program of highway construction calling for the skilled efforts and resources of a capable and competent man as Director of Highways of the State of Arkansas; and

"Whereas, in order to secure the services of a capable, skilled and competent Director of Highways, it is necessary that an adequate salary be paid for the type of person to be employed; and

"Whereas, the State will suffer irreparable injury and damage without proper supervision and control by a capable and competent Director of Highways;

"Therefore, an emergency is declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety, the same shall take effect and be in force from and after its passage and approval."

Acts 1951, No. 247, § 3 (in part): Mar. 9, 1951. Emergency clause provided: "It has been found that there are overlapping and conflicting laws relating to purchasing by the Arkansas State Highway Commission resulting in confusion and delay; therefore, an emergency is hereby declared to exist, and this act being necessary for the immediate preservation of the public peace, health, and safety, shall take effect and be in full force from and after its passage and approval."

Acts 1953, No. 123, § 14: Feb. 23, 1953. Emergency clause provided: "It has been found and is declared by the General Assembly of Arkansas that many defects exist in the administrative framework of the State Highway Department, that there is an immediate necessity for setting up a proper maintenance program to preserve the millions of dollars invested in the State Highways, that there is urgent need for excellent management and organization in the said Department, and that the enactment of this bill will provide for more efficient administration of the State Highway Department. Therefore, an emergency is declared to exist, and this act, being necessary for the preservation of the public peace, health, and safety, shall take effect and be in force from the date of its approval."

Acts 1969, No. 246, § 3: Mar. 12, 1969. Emergency clause provided: "It is hereby found and determined by the General Assembly that recent Federal Highway Legislation, particularly Public Law 90-495, approved August 23, 1968, and cited as the Federal Aid Highway Act of 1968, makes it necessary that the State of Arkansas provide for relocation assistance to persons displaced by the construction of Federal Aid Highways who are now suffering or will in the future suffer hardships because of financial loss due to the construction of Federal Aid Highways; and that, without compliance with this legislation, the State of Arkansas will lose



many millions of dollars of Federal Aid Highway funds, a loss the State can ill-afford when such funds are so greatly needed in this State to construct and maintain a suitable and efficient highway system. An emergency is hereby declared to exist, and this Act, being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

Acts 1971, No. 185, § 4: Mar. 2, 1971. Emergency clause provided: "It is hereby found and determined by the General Assembly that it is essential to the continued growth of the tourist industry in this State that Tourist Information Bureaus be established and operated at strategic locations in this State, and that it is urgent that such bureaus be established as soon as possible. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1971, No. 585, § 34: approved Apr. 6, 1971. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that (1) in order to establish an orderly procedure which will insure the monthly and quarterly distribution of funds for the necessary services and operations of the state government, as provided for in this Act, it is necessary that the provisions of this Act become effective immediately; (2) under the provisions of this Act seriously needed improvements for many of our public institutions are contemplated, and only the provisions of this Act will provide such funds which will be adequate to alleviate this situation; and (3) that only the provisions of this Act will correct many of our financial difficulties, and which otherwise may deprive the citizens of this State from receiving the benefits for which the operation of state government contemplates. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the preservation of the public peace, health and safety shall take effect and be in full force from and after its passage."

Acts 1975, No. 693, § 20: July 1, 1975. Emergency clause provided: "It is hereby found and determined by the Seventieth General Assembly that the Constitution of

the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1975, is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1975, could work irreparable harm upon the proper administration and providing of essential governmental programs. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1975."

Acts 1977, No. 192, § 13: Feb. 17, 1977. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present welfare and future freedom of the citizens of Arkansas require an adequate and balanced transportation system, and it is necessary that this policy be carried out by a State Highway and Transportation Department through continuous, comprehensive, coordinated transportation planning with other agencies of the State having transportation responsibility, local governments, regional planning and transportation agencies or commissions, federal agencies, and private transportation facilities. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1979, No. 794, § 27: July 1, 1979. Emergency clause provided: "It is hereby found and determined by the Seventy-Second General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1979 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1979 could work irreparable harm upon the proper administration and providing of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being neces-

sary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after July 1, 1979."

Acts 1981, No. 932, § 28: July 1, 1981. Emergency clause provided: "It is hereby found and determined by the Seventy-Third General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1981 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1981 could work irreparable harm upon the proper administration and providing of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after July 1, 1981."

Acts 1987, No. 742, § 25: July 1, 1987. Emergency clause provided: "It is hereby found and determined by the Seventy-Sixth General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1987 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1987 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1987."

Acts 1991, No. 547, § 6: Mar. 14, 1991. Emergency clause provided: "It is hereby found and determined by the Seventy-Eighth General Assembly that the construction and operation of turnpike projects, as authorized by prior legislative acts, are required for the public health, safety and welfare because of the increase of commerce and vehicular travel essential to individual and state progress and

prosperity. The moneys now available are insufficient to permit the construction of turnpike projects that can be constructed under the authority of those acts, however, it is anticipated that the United States Congress will in the near future authorize the use of federal-aid highway funds apportioned or allocated to this state for assisting in the construction of or assisting in the paying of the debt service on revenue bonds issued for the construction of turnpike projects. Prompt action is necessary to insure that, should such authorization be enacted by the United States Congress, such federal-aid funds may be utilized for such turnpike project purposes. Therefore, it is declared, for these reasons, that an emergency exists and this act being essential for the preservation of the public peace, health and safety, shall take effect and be in full force on and after its passage and approval."

Acts 1991, No. 872, § 27: July 1, 1991. Emergency clause provided: "It is hereby found and determined by the Seventy-Eighth General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1991 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1991 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1991."

Acts 1991, No. 961, § 6: Mar. 29, 1991. Emergency clause provided: "It is hereby found and determined by the General Assembly that in certain instances real estate taxes and other assessments have either not been collected or have been difficult to collect; that the provisions of this act are designed to alleviate such problems and that only by the immediate effectiveness of this act may such problems be solved and certain tax revenues and assessments be rightfully provided local taxing authorities. Therefore, an emergency is hereby declared to exist and



this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1993, No. 160, § 25: July 1, 1993. Emergency clause provided: “It is hereby found and determined by the Seventy-Ninth General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1993 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1993 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1993.”

Acts 2003, No. 296, § 11: Mar. 4, 2003. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that there is an immediate need for the planning and development of certain turnpike projects within the State of Arkansas, and that the planning and development will be facilitated by this act having immediate effect.

Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

Acts 2007, No. 66, § 2: July 1, 2007. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that an increase in the amount of tool allowance is essential to specific employees; that delay in increasing this amount could cause harm to the proper administration of this program; and that this act is immediately necessary for these reasons. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2007.”

**Cross References.** Death benefits for any police officer in the Arkansas State Highway and Transportation Department, § 12-8-212.

Payment to dependents of state highway employees, killed in the line of duty, § 21-5-701 et seq.

State highway commission, creation and organization, Ark. Const. Amend. 42.

## RESEARCH REFERENCES

**Am. Jur.** 7A Am. Jur. 2d, Auto., § 6 et seq.

39 Am. Jur. 2d, Highways, § 13 et seq.

**C.J.S.** 39A C.J.S., Highways, § 154 et seq.

## 27-65-101. Penalties.

(a)(1) Any person under color of any official position connected with the State Highway Commission or under color of authority derived therefrom who shall perform any act detrimental to the public interest or against any private right shall be deemed guilty of a misdemeanor, unless the act shall be plainly authorized by law.

(2) Every such offense shall be punished by fine of not over five hundred dollars (\$500) and by imprisonment for not over six (6) months.



(b) Any offense prohibited by this act and termed a felony shall be punishable by imprisonment in the penitentiary for not less than one (1) year nor more than five (5) years.

**History.** Acts 1913, No. 302, §§ 84, 85; C. & M. Dig., §§ 5219, 5220; Acts 1929, No. 65, § 60; Pope's Dig., §§ 6910, 6934, 6935; A.S.A. 1947, §§ 76-222, 76-529, 76-530.

**Meaning of "this act".** Acts 1929, No. 65, codified as §§ 26-55-101, 27-14-305,

27-14-601, 27-15-1501 [repealed], 27-64-104, 27-65-101, 27-65-107, 27-65-110, 27-65-112, 27-65-131 — 27-65-133, 27-67-101, 27-67-102, 27-67-201, 27-67-206 — 27-67-208, 27-67-211, 27-67-214, 27-67-218.

## 27-65-102. Administration of department.

The administrative control of the Arkansas State Highway and Transportation Department shall be vested in the State Highway Commission.

**History.** Acts 1953, No. 123, § 1; A.S.A. 1947, § 76-201.1.

**A.C.R.C. Notes.** Acts 2010, No. 253, § 9, provided: "REPORTING REQUIREMENTS. The Arkansas Highway Commission is hereby authorized to take appropriate action as necessary to restrict or reduce the operating, administration, and other associated costs of the State Highway and Transportation Department, including the Arkansas Highway Police Division, for the fiscal year ending June 30,

2011. Provided further, that the Arkansas Highway Commission is directed to furnish the Arkansas Legislative Council with an expenditure status report regarding the financial activities of the State Highway and Transportation Department at least quarterly, beginning no later than September 30, 1989.

"The provisions of this section shall be in effect only from July 1, 2010 through June 30, 2011."

## CASE NOTES

### Construction.

This section cannot be said to affect the adjudicatory provisions of the Administrative Procedure Act, § 25-15-201 et seq. *Arkansas State Hwy. Comm'n v. Wood*, 264 Ark. 425, 572 S.W.2d 583 (1978).

**Cited:** *Robinson v. Arkansas State Hwy. & Transp. Comm'n*, 532 F. Supp. 764 (E.D. Ark. 1982); *White v. Hankins*, 276 Ark. 562, 637 S.W.2d 603 (1982).

## 27-65-103. Office locations.

(a) The main office of the State Highway Commission shall be located in the City of Little Rock.

(b) The Arkansas State Highway and Transportation Department shall have its office in Little Rock, where complete records shall be kept.

**History.** Acts 1953, No. 123, §§ 1, 9; A.S.A. 1947, §§ 76-201.1, 76-201.9.

## CASE NOTES

**Cited:** *Robinson v. Arkansas State Hwy. & Transp. Comm'n*, 532 F. Supp. 764

(E.D. Ark. 1982); *White v. Hankins*, 276 Ark. 562, 637 S.W.2d 603 (1982).

**27-65-104. Members.**

(a) All appointments to the State Highway Commission shall be based upon the four (4) congressional districts as defined on July 20, 1979. Appointments to the commission shall be made so as to assure that, at the earliest possible date, the commission shall be composed of one (1) member from each of the four (4) congressional districts and one (1) member from the state at large.

(b) The members of the commission shall each receive one hundred dollars (\$100) per diem and their actual expenses while engaged in the work of the commission.

**History.** Acts 1953, No. 123, § 8; 1975, No. 693, § 14; 1979, No. 794, § 26; 1979, No. 932, § 1; 1981, No. 932, § 26; A.S.A. 1947, §§ 76-201.1a, 76-201.8.

garding actual expenses in subsection (b) may be affected by § 25-16-802 concerning mileage reimbursement for members of state boards and commissions.

**Publisher's Notes.** The provision re-

**27-65-105. Organization.**

The commissioners of the State Highway Commission, appointed pursuant to Arkansas Constitution, Amendment 42, shall organize by selecting one of their members as Chair of the State Highway Commission and another as vice chair. The vice chair shall have all the powers of the chair in the event of the chair's absence or disability or of a vacancy in the office.

**History.** Acts 1953, No. 123, § 2; A.S.A. 1947, § 76-201.2.

**27-65-106. Meetings.**

(a) The State Highway Commission shall meet at least once every two (2) months and at such other times, on the call of the Chair of the State Highway Commission or of a majority of the members, as may be deemed reasonable and proper to transact such business as may properly be brought before it.

(b) Three (3) members shall constitute a quorum of the commission for all purposes, except as provided in § 27-65-122.

(c) It shall be the duty of the commission to keep accurate minutes of all meetings of the commission in which shall be set forth all acts and proceedings of the commission.

**History.** Acts 1953, No. 123, §§ 6, 7; A.S.A. 1947, §§ 76-201.6, 76-201.7.

**RESEARCH REFERENCES**

**Ark. L. Rev.** Watkins, Open Meetings Under the Arkansas Freedom of Information Act, 38 Ark. L. Rev. 268.

**27-65-107. Powers and duties generally.**

(a) The State Highway Commission shall be vested with the following powers and shall have the following duties:

(1) To divide the state highway system into such maintenance and construction districts as the commission deems reasonable and proper for the performance of its duties hereunder;

(2) To let all contracts for the construction, improvement, and maintenance of the roads comprising the state highway system upon such terms and upon such conditions as required by law;

(3) To comply fully with the provisions of the present or future federal aid acts. The commission may:

(A) Enter into all contracts or agreements with the United States Government relating to the survey, construction, improvement, and maintenance of roads under the provisions of any present or future congressional enactment;

(B) Submit any scheme or program for construction or maintenance as may be required by the Federal Highway Administration, or otherwise provided by federal acts; and

(C) Do all other things necessary and proper to carry out fully the cooperation contemplated and provided for by present or future acts of Congress for the construction, improvement, and maintenance of roads in rural or urban areas;

(4) To establish a program of current and long-range planning for the state highway system and to develop and coordinate a balanced statewide unified transportation plan for all modes;

(5) To establish highway policies and administrative practices for the guidance and direction of the director;

(6) To prepare the budget request, expenditures programs, and periodical allotments;

(7) To investigate highway conditions and official conduct of departmental personnel;

(8) To gather and tabulate information and statistics on road building, maintenance, and improvements and to disseminate them through the state through appropriate channels;

(9) To employ labor and lease equipment;

(10) To establish a merit system under the merit council and a job classification system and a salary scale in the department;

(11) To make purchases of materials, supplies, and equipment as provided by law;

(12) To sell all obsolete equipment, surplus supplies, and material that cannot be used by the Arkansas State Highway and Transportation Department, and the commission is authorized to furnish evidence of title to the purchaser. Sales shall be made according to law;

(13) To adopt rules and regulations to implement its powers;

(14) To adopt reasonable rules and regulations from time to time for the protection of, and covering, traffic on and in the use of the state highway system and in controlling use of, and access to, the highways,



except that no provision contained herein shall be construed as repealing the existing "rules of the road";

(15) To bring suits to enforce demands of the state under this chapter and cause all suits to enforce any contracts or demands arising under the provisions of this chapter to be brought by the Attorney General in the name of the state; and

(16) To restrict certain trucks when traveling on freeways with six (6) or more lanes from traveling in the furthestmost left lane of the highways and to post signs compliant with the manual and specifications adopted pursuant to § 27-52-104 to notify motorists of the restrictions under this subdivision.

(b)(1) The rules and regulations together with any additions or amendments thereto, prescribed by the commission under the provisions of this chapter, shall have the force and effect of law. Any person, firm, or corporation violating any rule or regulation or any addition or amendment thereto shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than five dollars (\$5.00) nor more than one hundred dollars (\$100) for each offense.

(2) The commission shall cause such rules and regulations and any additions or amendments thereto, or repeals thereof, to be placed in printed form and published in a newspaper of statewide circulation once each week for three (3) consecutive weeks. In addition, the commission shall cause two (2) copies to be mailed immediately to the circuit clerk of each county. One of these copies shall be posted immediately upon receipt thereof by the clerk, at a conspicuous place in or about the courthouse, and the other copy retained in his office for the information of the public. No such rules and regulations or additions or amendments thereto or repeals thereof shall become effective until sixty (60) days after their last publication.

(c) Notwithstanding any other provision of law to the contrary, the commission shall have the authority to enter into contracts that combine the design, construction, and construction engineering phases of a project into a single contract that shall be referred to as a design-build project contract.

**History.** Acts 1929, No. 65, § 53; Pope's Dig., § 6903; Acts 1953, No. 123, § 5; 1977, No. 192, § 6; A.S.A. 1947, §§ 76-201.5, 76-217; Acts 2003, No. 460, § 1; 2007, No. 1054, § 1.

**Amendments.** The 2007 amendment added (a)(16).

## CASE NOTES

### ANALYSIS

Commissioners.  
Contracts.  
Employees.  
Ferries.  
Orders.

Parking Regulations.  
Pedestrians.  
Suits Against Commission.

### Commissioners.

The members of the Highway Commission, although not judges, perform a

quasi-judicial function and therefore, by analogy, should be subject to the appearance of bias standard for judges. *Acme Brick Co. v. Missouri Pac. R.R.*, 307 Ark. 363, 821 S.W.2d 7 (1991).

#### **Contracts.**

The authority of State Highway Commission to let contracts for the construction and maintenance of highways is statutory, and any contract not let in the prescribed manner is unauthorized and voidable at the state's election. *Leonard v. State ex rel. Attorney Gen.*, 185 Ark. 998, 50 S.W.2d 598 (1932).

#### **Employees.**

The State Highway Commission has implied authority to employ attorneys if their services are reasonably necessary to the primary object of constructing or maintaining roads. *Parker v. Pace & Davis*, 190 Ark. 950, 82 S.W.2d 259 (1935).

Portion of State Highway Commission's employee grievance procedure which required an employee to submit his written complaint directly to the designated employer representative held not to violate U.S. Const. Amend. 1. *Smith v. Arkansas State Highway Employees*, 441 U.S. 463, 99 S. Ct. 1826, 60 L. Ed. 2d 360 (1979).

#### **Ferries.**

The State Highway Commission has authority to operate ferries on state highways. *Arkansas State Hwy. Comm'n v. Butler*, 105 F.2d 732 (8th Cir. 1939).

#### **Orders.**

Order setting out requirements for construction of access driveways was not discriminatory under Ark. Const., Art. 2, § 3. *Arkansas State Hwy. Comm'n v. Hightower*, 238 Ark. 569, 383 S.W.2d 279 (1964).

Where persons were granted permit to construct an access driveway to state highway, they were estopped from questioning validity of order requiring permit, for they had accepted the benefits of such order and therefore could not question its validity. *Arkansas State Hwy. Comm'n v. Hightower*, 238 Ark. 569, 383 S.W.2d 279 (1964).

#### **Parking Regulations.**

State Highway Commission has authority to prohibit parking on state highway truck routes within city. *Arkansas State Hwy. Comm'n v. City of Little Rock*, 227 Ark. 660, 300 S.W.2d 929 (1957).

#### **Pedestrians.**

Former similar statute did not authorize the State Highway Commission to adopt a rule as to the side of the highway on which pedestrians should travel. *Snow v. Riggs*, 172 Ark. 835, 290 S.W. 591 (1927) (decision under prior law).

#### **Suits Against Commission.**

The State Highway Commission was held to be an agency of the state and could not be sued by contractors to recover a balance claimed to be due under a contract for construction work. *Arkansas State Highway Com. v. Nelson Bros.*, 191 Ark. 629, 87 S.W.2d 394 (1935) (decision under prior law).

**Cited:** *Ottinger v. Blackwell*, 173 F. Supp. 817 (E.D. Ark. 1959); *Robinson v. Arkansas State Hwy. & Transp. Comm'n*, 532 F. Supp. 764 (E.D. Ark. 1982); *Medlock v. Arkansas State Hwy. Comm'n*, 6 Ark. App. 361, 642 S.W.2d 336 (1982); *Skeets v. Johnson*, 805 F.2d 767 (8th Cir. 1986).

### **27-65-108. Agreements for promoting highway programs.**

(a) The State Highway Commission is authorized to enter into agreements with groups or associations for the promotion of highway programs.

(b) Such agreements may contain provisions for collection and assessments of dues or contributions.

**History.** Acts 1987, No. 742, § 21.

**A.C.R.C. Notes.** Former § 27-65-108, concerning agreements for promoting highway programs, is deemed to be super-

seded by this section. The former section was derived from Acts 1985, No. 138 § 24; A.S.A. 1947, § 76-247.

### 27-65-109. Transfer agreements.

(a) The State Highway Commission and the county judges of the respective counties are authorized to enter into agreements whereof certain highways in the state highway system become a part of the county highway system and certain highways in the county highway system become a part of the state highway system.

(b) All such transfer agreements shall be recorded in the minutes of the commission and spread upon the appropriate county court record.

**History.** Acts 1961, No. 150, § 4.

**Publisher's Notes.** Acts 1961, No. 150, § 5, provided that the act was supplemental to existing law on the subject.

The case of *Hinchey v. Thomasson*, 292 Ark. 1, 727 S.W.2d 836 (1987), states that the language in the last sentence of sub-

section (b) of § 27-67-201, providing that the commission shall not have authority to eliminate any part of the highway system was repealed by implication, to the extent of the conflicting provisions, by the passage of this section.

## CASE NOTES

### ANALYSIS

In General.  
Elimination.  
Exchange.

#### In General.

Although the provisions of § 27-67-201 that the commission shall not have authority to eliminate any part of the highway system have been repealed by implication to the extent they conflict with this section, the remainder of § 27-67-201 is unaffected, and accordingly remains in force. *Hinchey v. Thomasson*, 292 Ark. 1, 727 S.W.2d 836 (1987).

#### Elimination.

The provisions in § 27-67-201 that the commissioners shall not have authority to

eliminate any part of the highway system were repealed by implication to the extent they conflicted with this section, which authorizes the commissioners to exchange lands with county highway systems. *Hinchey v. Thomasson*, 292 Ark. 1, 727 S.W.2d 836 (1987).

#### Exchange.

State highway and transportation department commissioners may exchange state highway system roads for county roads. *Hinchey v. Thomasson*, 292 Ark. 1, 727 S.W.2d 836 (1987).

### 27-65-110. Records and reports.

(a) The State Highway Commission shall submit annually to the Governor a report of its activities.

(b) The commission shall make a biennial report to the General Assembly embodying a clear statement of all the questions that have arisen in that time and setting out such recommendations as it may think proper to make for the improvement of the road system of the state and for the efficiency of the department.

(c)(1) The commission shall obtain and preserve such information, reports, maps, plats, books, records, and data of every kind as may be valuable on the subject of roads and highways. Its services in the matter of consultations and advice on the matter of public roads, and the improvement and maintenance thereof, shall be free to all officials



of road improvement districts and to all state and county officers having need thereof.

(2) Any member of the commission or any employee who shall charge or receive any compensation for furnishing any information or data to any state or county official for state or county officials' use only, or commissioner of any road district, shall be guilty of a misdemeanor and be fined in any sum not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000).

**History.** Acts 1913, No. 302, § 34; C. & 123, § 11; A.S.A. 1947, §§ 76-201.11, 76-M. Dig., § 5206; Acts 1929, No. 65, § 17; 223, 76-238.  
Pope's Dig., §§ 6499, 6508; Acts 1953, No.

### **27-65-111. Purchase of equipment and supplies.**

The following procedures shall be used by the State Highway Commission in the purchasing of all materials, supplies, and equipment:

(1) The commission may at current prices purchase materials, supplies, and equipment where the cost does not exceed the amount of one thousand dollars (\$1,000) without the formality of advertising or taking bids; and

(2)(A) In making purchases of materials, supplies, and equipment, the estimated total cost of which will exceed one thousand dollars (\$1,000), the commission shall advertise in one (1) newspaper of statewide circulation seven (7) days prior to the date of receiving bids a notice to the effect that sealed bids will be received by the commission up to a time and date to be mentioned therein for furnishing the articles specified in the bid proposal.

(B) Contracts shall be awarded to the lowest and best bidder, price, quality, delivery cost, and time being considered. The commission shall advertise for price quotations on maintenance materials to be used for a six-month period, location and delivery cost to be considered in computing bids. However, if, in the opinion of the commission, bids submitted are not in the best interest of the state, it may reject any or all bids and may readvertise for bids.

(C) All bids received by the commission pursuant to this section shall be filed and preserved for a period of two (2) years.

**History.** Acts 1951, No. 247, §§ 1, 3;  
A.S.A. 1947, §§ 76-241, 76-242.

### **27-65-112. Acceptance of federal aid.**

(a) The State of Arkansas assents to the provisions of the Act of Congress, approved July 11, 1916, 39 Stat. 1, 355, entitled "An Act to Provide That the United States Shall Aid the States in the Construction of Rural Post Roads, and for Other Purposes", and to the provisions of all acts amendatory thereof or supplemental thereto.

(b) The State Highway Commission is authorized and empowered on behalf of the state to:

(1) Cooperate with the Secretary of Agriculture of the United States in every way contemplated by the above act of Congress or any acts of Congress hereafter passed, in the construction and improvement of roads in Arkansas, and to select and designate, in the name of the state, a proper system of state highways for the expenditure of federal-aid apportionments;

(2) Modify or revise the designation as required by proper federal authorities;

(3) Make the necessary application for allotments of federal aid;

(4) Submit all project statements, surveys, plans, specifications, estimates, and other reports or information required by the duly constituted federal authorities; and

(5) Enter into all necessary contracts with the proper federal authorities in order to secure the full cooperation of the United States Government and the benefit of all present and future allotments in aid of highway construction.

(c) The good faith of the state is pledged to maintain all roads in the state on which federal-aid funds have been or may hereafter be expended.

(d) The Treasurer of State is designated as the proper authority of the State of Arkansas to receive any amount heretofore paid and not disbursed or hereafter paid by the United States Government for the construction or improvement of roads in Arkansas.

(e) Any and all moneys so received shall be credited to the State Highway and Transportation Department Fund.

**History.** Acts 1929, No. 65, § 22; Pope's Dig., § 6550; A.S.A. 1947, § 76-522.

**U.S. Code.** The federal statute referred to in subsection (a) of this section is no

longer codified. The federal laws relating to state aid for highways are found in Title 23 of the United States Code.

### **27-65-113. Relocation assistance.**

(a) The State of Arkansas assents to the provisions of Section 30 of the Act of Congress entitled "The Federal-Aid Highway Act of 1968", Public Law 90-495, approved August 23, 1968; the same being Chapter 5, Title 23 — Highways, United States Code.

(b) The State Highway Commission and the highway, road, and street authorities of the counties and the municipal corporations of Arkansas within their respective jurisdictions are authorized, empowered, and directed to perform such acts as may be necessary to provide relocation assistance in accordance with the provisions of Chapter 5, Title 23, United States Code, and the rules and regulations promulgated thereunder by the United States Secretary of Transportation.

**History.** Acts 1969, No. 246, §§ 1, 2; A.S.A. 1947, §§ 76-553, 76-554.

**U.S. Code.** The Federal-Aid Highway

Act of 1968, referred to in this section, is codified as 23 U.S.C. § 101 et seq.

**27-65-114. Tourist information bureaus.**

(a) The State Highway Commission is authorized to establish and maintain tourist information bureaus and enter into agreements with and lease rights-of-way, land, and other facilities owned by the commission to persons, partnerships, associations, public or private corporations, or any agency of the State of Arkansas for the purpose of establishing and maintaining tourist information bureaus.

(b) The commission shall adopt and establish regulations for the establishment and maintenance of the tourist information bureaus provided for in this section.

**History.** Acts 1971, No. 185, §§ 1, 2;  
A.S.A. 1947, §§ 76-244, 76-245.

**27-65-115. Use of federal aid funds for turnpike projects.**

Notwithstanding any provision of law to the contrary, the State Highway Commission is hereby authorized, in its discretion, to use any federal-aid highway funds apportioned or allocated to the State of Arkansas by the United States Secretary of Transportation or the Federal Highway Administration, which funds are authorized or may be authorized in the future by the United States Congress to be utilized in assisting in the construction of or for the purposes of assisting in the paying of the debt service on revenue bonds issued for the construction of any turnpike project or projects in this state, which project or projects may be undertaken by the commission under § 27-90-201 et seq.

**History.** Acts 1991, No. 547, § 1; 2003,  
No. 296, § 6.

**27-65-116 — 27-65-121. [Reserved.]****27-65-122. Director of State Highways and Transportation.**

(a) By a majority vote of the full State Highway Commission, the commission shall appoint a Director of State Highways and Transportation.

(b) The director shall be a practical business or professional person. At the time of appointment, the director may be a nonresident of the State of Arkansas.

(c) The director shall:

- (1) Devote full time and attention to the duties set out herein;
- (2) Receive compensation as fixed by the commission, unless a salary is fixed by the General Assembly in the appropriation act;
- (3) Be reimbursed for actual traveling expenses while engaged in the discharge of duties;
- (4) Be the chief executive officer of the Arkansas State Highway and Transportation Department and, subject to the approval of the commission, have direct and full control and management of the affairs relating to the state highways; and



(5) Attend all meetings of the commission and furnish the members with all information they may require for the proper administration of the department.

(d) The director may be removed from office by a majority vote of the full commission.

**History.** Acts 1953, No. 123, § 3; A.S.A. 1947, § 76-201.3.

**Cross References.** Appointment of director, Ark. Const. Amend. 42, § 6.

### **27-65-123. Secretary.**

(a) The Arkansas State Highway and Transportation Department, with the advice and consent of the State Highway Commission, shall appoint an assistant who shall serve as secretary to the commission.

(b) The secretary:

(1) Shall keep full and true records of the proceedings of the commission;

(2) Shall be the custodian of all books, maps, documents, and papers filed with the commission and all orders made by the commission;

(3) Shall have, under the direction of the commission, general charge of its office;

(4) Shall superintend its clerical business;

(5) Shall perform such other duties as the director or the commission may require; and

(6) May designate one (1) of the clerks in his or her office to perform the duties of secretary during his or her absence. During this time, the clerk so designated shall possess the powers of the secretary.

(c) All suits involving the validity of this section or any portion thereof shall be deemed matters of public interest and shall be advanced and disposed of at the earliest possible moment. Appeals in such suits must be taken and perfected within thirty (30) days from the date of the judgment or decree.

**History.** Acts 1933, No. 3, §§ 3, 9; § 7, provided in part that the act was amendatory of and cumulative to other laws relating to the Arkansas State Highway and Transportation Department.

**Publisher's Notes.** Acts 1933, No. 3, § 7, provided in part that the act was amendatory of and cumulative to other laws relating to the Arkansas State Highway and Transportation Department.

### **27-65-124. Personnel.**

The State Highway Commission may employ such personnel as may be reasonable and proper and shall prescribe and fix their qualifications, duties, and salaries.

**History.** Acts 1953, No. 123, § 10; A.S.A. 1947, § 76-201.10.

**27-65-125. Accountants.**

The State Highway Commission may periodically, or whenever it deems advisable, employ expert public accountants to audit its records, books, accounts, and vouchers, or any part of them, so that the commission may always be advised of the exact status of the affairs under its control, and to aid it in the administration of its affairs.

**History.** Acts 1927, No. 112, § 17;  
A.S.A. 1947, § 76-212.

**27-65-126. Engineers.**

(a) The State Highway Commission shall have authority to employ a consulting engineer whenever it deems the services of such an engineer to be necessary or advisable, at a compensation to be agreed on by the commission and the engineer, with the amount of the compensation, however, to be subject in all cases to the approval of the Governor.

(b) All district highway engineers and other responsible engineering positions shall be filled by an engineer licensed under the laws of Arkansas.

**History.** Acts 1927, No. 112, § 16;  
1947, No. 103, § 1; A.S.A. 1947, §§ 76-  
210, 76-211.

**27-65-127. [Repealed.]**

**Publisher's Notes.** This section, concerning free passes upon common carriers, was repealed by Acts 2005, No. 226, § 1. The section was derived from Acts

1913, No. 302, § 38; C. & M. Dig., § 5212;  
Pope's Dig., § 6513; A.S.A. 1947, § 76-  
239.

**27-65-128. Investigations and reports by engineer and geologist.**

(a) The consulting engineer and the State Geologist shall make such investigations and reports as the State Highway Commission may from time to time require.

(b) They shall be especially charged with the study of the road materials of the state, their location, relative value, cost, and durability, and the cost of transporting road materials to other parts of the state.

(c) They shall make such experiments and tests as they may be able with the equipment of the University of Arkansas and such funds as may be provided.

(d) They shall embody all the information gathered as to road materials in such published reports as may be convenient for distribution.

**History.** Acts 1913, No. 302, § 37; C. & M. Dig., § 5211; Pope's Dig., § 6512; A.S.A. 1947, § 76-225; Acts 1995, No. 1296, § 96.

**27-65-129. Oaths.**

(a) The members of the State Highway Commission and the Director of State Highways, before entering upon the discharge of their duties, shall take oaths that they will faithfully and honestly execute the duties of their offices during their continuance therein.

(b) All employees of the commission shall take the following oath before assuming the duties of their employment:

"I do solemnly swear (or affirm) that so long as I am an employee of the State Highway Commission of the State of Arkansas or of the Arkansas State Highway and Transportation Department, I will give my entire and undivided time to the work of the department, and that I will not accept other employment while in the employ of the department, nor will I be interested, either directly or indirectly, in any of the contracts, work, or other activity of the Arkansas State Highway and Transportation Department other than as employee of the department, nor in the purchase or sale of any material, machinery, or equipment bought for or sold by the department while an employee of the department; that I will not be interested otherwise than as an employee of the state in adding any road to the state highway system or in the improving of any road by the Arkansas State Highway and Transportation Department, nor in the appointment of any person to any position in connection therewith; and that I will diligently and impartially execute the duties of my employment, and I will never use any information or influence that I may have, by reason of my employment, to gain any pecuniary reward for myself, directly or indirectly, nor will I disclose information so that it may be used by others, so help me God."

(c) All suits involving the validity of subsection (b) of this section or any portion thereof shall be deemed matters of public interest and shall be advanced and disposed of at the earliest possible moment, and appeals in these suits must be taken and perfected within thirty (30) days from the date of the judgment or decree.

**History.** Acts 1933, No. 3, §§ 5, 9; Pope's Dig., §§ 6481, 6484; Acts 1949, No. 251, § 2; 1953, No. 123, § 4; A.S.A. 1947, §§ 76-201.4, 76-206, 76-208.

**Publisher's Notes.** Acts 1933, No. 3,

§ 7, provided in part that the act was amendatory of and cumulative to other laws relating to the Arkansas State Highway and Transportation Department.

**CASE NOTES****Effect.**

Oath of state highway engineer amounts to a prohibition against his entering into a contract for the construction of a public highway; the oath applies to contracts for highways provided for by

special acts as well as those to be built under general law. *Carter v. Bradley County Road Improv. Dist.*, 155 Ark. 288, 246 S.W. 9 (1922) (decision under prior law).



**27-65-130. Bonds — Commissioner and director.**

(a) Each commissioner of the State Highway Commission shall give bond, as required by law.

(b) Upon appointment, the Arkansas State Highway and Transportation Department shall execute a bond to the State of Arkansas in the sum of twenty-five thousand dollars (\$25,000) for faithful performance of his or her duties.

(c) The premium on these bonds shall be paid out of the State Treasury from the annual appropriation for the commission.

**History.** Acts 1953, No. 123, §§ 3, 4; A.S.A. 1947, §§ 76-201.3, 76-201.4.

**A.C.R.C. Notes.** The operation of this section was suspended by adoption of a self-insured fidelity bond program for pub-

lic officers, officials and employees, effective July 20, 1987, pursuant to § 21-2-701 et seq. The section may again become effective upon cessation of coverage under that program. See § 21-2-703.

**27-65-131. Bonds — Suppliers and employees.**

(a) Every person who shall have charge of any supplies, materials, or equipment of any kind, exceeding five hundred dollars (\$500) in aggregate value at any time, when deemed expedient by the State Highway Commission, shall furnish a surety bond in an amount equal to the value thereof, conditioned upon the proper care and use of it and the prompt delivery thereof or accounting therefor when required. The commission may require bonds of other employees as it may deem expedient.

(b) Every contractor for work in excess of one thousand dollars (\$1,000) shall be required to furnish a bond to be approved by a majority of the commission in an amount at least equal to the amount of the contract, conditioned as the commission may require. These bonds shall also be liable for material, labor, supplies, and expenses used in or incidental to the work, including that which may become due to subcontractors, for which an action may be maintained on the bond by the parties to whom payments may be due.

(c) All bonds required by this act of officials or employees of the commission or required by the State Highway Commission of its employees shall be executed by a solvent surety company authorized to do business in the state and approved by the commission and filed with the Secretary of State, and the premium shall be paid out of the State Highway and Transportation Department Fund. The commission may itself take surety bonds on any or all employees and pay the premium thereon.

**History.** Acts 1929, No. 65, §§ 14, 15, 53; Pope's Dig., §§ 6492, 6493, 6903; A.S.A. 1947, §§ 76-217, 76-219, 76-220.

**A.C.R.C. Notes.** The operation of this section was suspended by adoption of a

self-insured fidelity bond program for public officers, officials and employees, effective July 20, 1987, pursuant to § 21-2-701 et seq. The section may again become effective upon cessation of coverage under

that program. See § 21-2-703.

**Cross References.** Public contractors bonds, § 22-9-401.

### RESEARCH REFERENCES

**U. Ark. Little Rock L.J.** Paul, The Law of Construction Bonds in Arkansas: A Review, 9 U. Ark. Little Rock L.J. 333.

### CASE NOTES

#### Scope of Bond.

The only statutory requirement imposed by this section is that bonds furnished to the Highway Commission assume liability for the claims of laborers and materialmen, thus, the bond liability imposed by this section is limited to liability for material, labor, supplies, and ex-

penses used in or incidental to the work, including that which may become due to subcontractors. *United States Fid. & Guar. Co. v. Little Rock Quarry Co.*, 309 Ark. 269, 830 S.W.2d 362 (1992).

**Cited:** *Ottinger v. Blackwell*, 173 F. Supp. 817 (E.D. Ark. 1959).

#### **27-65-132. Contracts between commission and employees.**

(a) Engineers, attorneys, or other employees of the State Highway Commission are prohibited from making any contract with that commission, other than their contracts of employment.

(b) None shall be pecuniarily interested, directly or indirectly, in any contract made by the commission or in the location or improvement of any state road.

(c) Willful violation of this section shall be deemed a felony punishable by imprisonment in the Department of Correction for not less than one (1) year.

**History.** Acts 1929, No. 65, § 5; Pope's Dig., § 6486; A.S.A. 1947, § 76-221.

#### **27-65-133. Corruption in office.**

Whoever, being a member of the State Highway Commission or an engineer, agent, or other employee, acting for or on behalf of the commission, shall accept or agree to accept, receive or agree to receive, ask or solicit, either directly or indirectly, and any person who shall give or offer to give, or promise, or cause or procure to be promised, offered, or given, either directly or indirectly, to any member of the commission, or any engineer, agent, or other employees acting for or on behalf of the commission, any moneys or any contract, promise, undertaking, obligation, gratuity, or security for the payment of money or for the delivery or conveyance of anything of value or any political appointment or influence, present, or reward or any employment or any other thing of value with the intent to have his or her decision or action on any question, matter, cause, or proceeding which may at the time be pending, or which may by law be brought before him or her in his or her official capacity or in his or her place of trust or profit, influenced

thereby, shall be deemed guilty of a felony, and upon conviction, shall be imprisoned in the penitentiary not less than one (1) nor more than five (5) years and shall forever after be disqualified from holding any office of trust or profit, under the Constitution or laws of this state.

**History.** Acts 1929, No. 65, § 60; Pope's Dig., § 6910; A.S.A. 1947, § 76-222.

### **27-65-134. Venue in suits against state highway officers.**

(a) Suits against any state officer involving any act done or proposed to be done in the administration of the Arkansas State Highway and Transportation Department or of any law pertaining to the state highway system shall be brought only at the seat of government, in Pulaski County.

(b) However, where any suit may be filed against any contractor, or persons engaged in the construction of state highways or on account of any claim growing out of any contract, express or implied, or on account of any damages to person or property, the suits may be filed in any county in this state where service can be obtained upon the defendant by summons or publication of a warning order, and it shall give the court in which the suit is filed against the defendant jurisdiction when service is complete.

**History.** Acts 1933, No. 50, § 1; Pope's Dig., § 6514; A.S.A. 1947, § 76-232.

## **CASE NOTES**

### **ANALYSIS**

In General.  
Tort Actions.

#### **In General.**

A suit against the Arkansas State Highway Commission involving any action done or proposed to be done in administration of the Arkansas State Highway and Transportation Department must be brought in Pulaski County, and the Attorney General is not authorized to enter the

appearance of the commission in such an action instituted elsewhere. *Arkansas Hwy. Comm'n v. Holt*, 190 Ark. 868, 81 S.W.2d 929 (1935).

#### **Tort Actions.**

This section does not apply to suits in tort. *Southeast Constr. Co. v. Wood*, 223 Ark. 328, 265 S.W.2d 722 (1954).

**Cited:** *Arkansas State Racing Com. v. Southland Racing Corp.*, 226 Ark. 995, 295 S.W.2d 617 (1956).

### **27-65-135. Fiscal year.**

(a) The fiscal year of the Arkansas State Highway and Transportation Department shall be from July 1 to June 30 of each year.

(b) The State Highway Commission is exempted from the provisions of Acts 1971, No. 585, §§ 9, 10 [superseded].

**History.** Acts 1933, No. 92, § 2; Pope's Dig., § 6522; Acts 1971, No. 585, § 18; A.S.A. 1947, §§ 76-202, 76-246.



**27-65-136. Prohibition on increasing number of employees before election.**

(a) Within ninety (90) days preceding any primary election, the Arkansas State Highway Department shall not increase the number of its employees beyond the average number which were employed by it and under its supervision during the twelve (12) months prior to the primary election, except in case of floods.

(b) The commissioners of the State Highway Commission and the Treasurer of State shall not, at the penalty of being liable upon their official bonds, make any payment for salary to employees engaged by the department in violation of the provisions of this section.

**History.** Acts 1938 (1st Ex. Sess.), No. 14, § 1-A.

**27-65-137. Special expense allowances.**

(a) Due to his or her exacting and special duties, the Director of State Highways and Transportation is hereby authorized an expense allowance of five hundred dollars (\$500) per month upon approval of the State Highway Commission.

(b) The commission shall provide for an expense allowance of up to two thousand dollars (\$2,000) per annum for each chief, captain, first lieutenant, second lieutenant, sergeant, corporal, patrolman first class, patrolman, and motor carrier safety inspector of the Arkansas Highway Police Division of the Arkansas State Highway and Transportation Department.

**History.** Acts 1991, No. 872, § 17; (1st Ex. Sess.), No. 67, § 16. A similar provision which was also codified as § 27-1993, No. 160, § 16.

**A.C.R.C. Notes.** Former § 27-65-137, concerning expense allowances, is deemed to be superseded by this section. The former section was derived from Acts 1989 27-65-137, and was previously superseded, was derived from Acts 1987, No. 742, § 16.

**27-65-138. Acquisition of property.**

(a) Notwithstanding the provisions of any laws to the contrary, the Arkansas State Highway and Transportation Department, acting on behalf of the State Highway Commission, is hereby authorized, on acquiring whole taxable parcels of property upon which real estate taxes or assessments are due and payable or which shall become due and payable for any time period prior to the acquisition, to collect from the owner or owners of such property such taxes or assessments and to remit such taxes or assessments to the appropriate taxing or assessing authorities.

(b) Likewise, upon a showing by the department of such tax or assessment amounts, the courts of this state may deduct such amounts prior to delivering any orders regarding compensation by the department or commission to the owner or owners, and the department shall

remit such taxes or assessments to the appropriate taxing or assessing authorities. In those instances where the department acting on behalf of the commission has deposited an estimated just compensation amount with the court, the department shall notify the county tax collector of that deposit.

**History.** Acts 1991, No. 961, § 1; 2001, No. 1135, § 1.

### **27-65-139. Uniform allowance.**

(a)(1) The State Highway Commission is hereby authorized to pay from funds appropriated for maintenance and operation a uniform allowance not to exceed one thousand eight hundred dollars (\$1,800) per annum for all uniformed personnel (Arkansas Highway Police Patrol Officer through Chief, Police Division) of the Arkansas Highway Police Division of the Arkansas State Highway and Transportation Department.

(2) The above-mentioned per annum allowance shall be divided and paid on a monthly basis for each month of the employment for those eligible personnel of the Arkansas Highway Police Division of the department.

(b) Provided further, that when uniformed personnel are hired, they shall be paid an initial lump sum uniform allowance of two hundred dollars (\$200) that shall be in addition to the monthly allowance as herein provided.

**History.** Acts 1993, No. 160, § 12; 2001, No. 1688, § 1.

### **27-65-140. Tool allowance.**

(a) The State Highway Commission is hereby authorized to pay from funds appropriated for maintenance and operation a tool allowance of four hundred eighty dollars (\$480) per annum for each mechanic, electrical, plumbing, and mechanical repairer, welder, or body repairer and painter employed by the Arkansas State Highway and Transportation Department who works on highway equipment and facilities.

(b) The aforementioned allowance shall be equated to forty dollars (\$40.00) per month for each month of employment for the eligible personnel of the department.

**History.** Acts 1993, No. 160, § 13; 2007, No. 66, § 1. (\$480)" for "three hundred sixty dollars (\$360)" in (a); and substituted "forty dollars (\$40.00)" for "thirty dollars (\$30.00)"

**Amendments.** The 2007 amendment substituted "four hundred eighty dollars in (b).

**27-65-141. Payment of claims for damages to personal property.**

The Arkansas State Highway and Transportation Department is hereby authorized to pay amounts not to exceed twenty-five thousand dollars (\$25,000) per claim for damages to personal property of others resulting from the operation of any motor vehicle or other motorized equipment of the department upon determination by the State Claims Commission that the claim is valid after hearing the facts thereof and after prior review by the Legislative Claims Committee and the Legislative Council.

**History.** Acts 1993, No. 160, § 14.

**27-65-142. Moving expense.**

The State Highway Commission is hereby authorized to pay from funds appropriated from maintenance and operation the actual expense of moving the household and personal property of those employees of the Arkansas State Highway and Transportation Department who because of their job assignments are required to move their places of residence by the commission by the Director of State Highways and Transportation, subject to the approval by the director for each move so required.

**History.** Acts 1993, No. 160, § 15.

**27-65-143. Award of pistol upon retirement.**

When a highway police patrol officer of the Arkansas Highway Police Division of the Arkansas State Highway and Transportation Department retires from service or dies while still employed with the department, the State Highway Commission may award the pistol carried by the officer at the time of his or her death or retirement from service to:

- (1) The officer upon retirement; or
- (2) The officer's spouse if the officer is deceased and the spouse is eligible under applicable state and federal laws to possess a firearm.

**History.** Acts 2005, No. 2244, § 1.

**27-65-144. Additional annual reporting.**

(a) The Arkansas State Highway and Transportation Department shall analyze all reported wrong-way crashes on interstate highways and other freeways that are a part of the state highway system to determine whether the installation of additional traffic control devices is warranted and feasible in order to reduce the possibility of future wrong-way crashes.

(b) Any additional traffic control devices installed under subsection (a) of this section shall conform to the Manual on Uniform Traffic Control Devices for Streets and Highways, approved by the Federal Highway Administration as the national standard in accordance with



23 U.S.C. § 109(d), 23 U.S.C. § 114(a), 23 U.S.C. § 217, 23 U.S.C. § 315, 23 U.S.C. § 402(a), 23 C.F.R. § 655, and 49 C.F.R. §§ 1.48(b)(8), 1.48(b)(33), and 1.48(c)(2), and is the manual adopted by the State Highway Commission under § 27-52-104.

(c) A person may not file a legal action as a result of the implementation of any recommendations made from studies conducted under this section.

**History.** Acts 2009, No. 641, § 1.

## CHAPTER 66

### ESTABLISHMENT AND MAINTENANCE GENERALLY

#### SUBCHAPTER.

1. GENERAL PROVISIONS.
2. ROAD DESIGNATION GENERALLY.
3. HIGHWAY, ROAD, AND STREET SYSTEMS CLASSIFICATION LAW.
4. PRIVATE ROADS.
5. PROTECTION OF ROAD SURFACES.
6. EMPLOYMENT OF CONVICTS.

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#### RESEARCH REFERENCES

**ALR.** Liability, in motor vehicle-related cases, of governmental entity for injury or death resulting from design, construction, or failure to warn of narrow bridge. 2 A.L.R.4th 635.

Construction contractor's liability for injuries to third persons by materials or debris on highway during course of construction or repair. 3 A.L.R.4th 770.

Liability, in motor vehicle-related cases, of governmental entity for injury, death, or property damage resulting from defect or obstruction in shoulder of street or highway. 19 A.L.R.4th 532.

Governmental liability to advertiser arising from obstruction of public view of sign on account of growth of vegetation in public way. 21 A.L.R.4th 1309.

Liability for failure to reduce vegetation

obscuring view at railroad crossing or at street or highway intersection. 22 A.L.R.4th 624.

Damages resulting from temporary conditions incident to public improvements or repairs as compensable taking. 23 A.L.R.4th 674.

State or local governmental unit's liability for injury to private highway construction worker based on its own negligence. 29 A.L.R.4th 1188.

Personal injury liability of civil engineer for negligence in highway or bridge construction or maintenance. 43 A.L.R.4th 911.

**Am. Jur.** 39 Am. Jur. 2d, Highways, § 22 et seq.

**C.J.S.** 39A C.J.S., Highways, § 2 et seq. 60 C.J.S., Motor Veh., § 168 et seq.

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#### SUBCHAPTER 1 — GENERAL PROVISIONS

##### SECTION.

27-66-101. Construction and maintenance contracts between state and county.

##### SECTION.

27-66-102. Maintenance of roads under supervision of federal agency.

**Preambles.** Acts 1937, No. 262 contained a preamble which read: "Whereas, it is probable that the Arkansas State Highway Department will receive from the United States Government, through the Bureau of Public Roads, funds for the construction of roads other than the roads on the State Highway system; and

"Whereas, it is necessary to assure the Bureau of Public Roads that proper maintenance on these roads will be had, if and when constructed...."

**Effective Dates.** Acts 1937, No. 262, § 2: approved Mar. 17, 1937. Emergency clause provided: "Because of the fact that these funds might become available immediately, and this act being necessary for the immediate preservation of public peace, health, and safety, an emergency is hereby declared to exist and this act is declared to be in force and effect immediately after its passage."

Acts 1953, No. 114, § 6: Feb. 20, 1953. Emergency clause provided: "It has been found and is declared by the General Assembly of Arkansas that great savings of funds may be effected by the pooling of equipment and funds for the maintenance and construction of county roads by the State Highway Commission under contracts between the various Counties and the State Highway Commission, and that enactment of this bill will provide for more efficiency in the construction, repair, and maintenance of county roads. Therefore, due to the financial condition of many counties in this State, it is advisable that they be at once empowered to enter into such agreements, and this act thus being necessary for the preservation of the public peace, health and safety, an emergency is declared to exist, and this act shall take effect and be in force from and after the date of its approval."

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### **27-66-101. Construction and maintenance contracts between state and county.**

(a)(1) The State Highway Commission is authorized and empowered to enter into contracts with as many as two (2) counties of this state under the terms of which, in consideration of the sum agreed to be paid by the particular county, the commission will be authorized, permitted, and required to assume the work of construction, repair, and maintenance of all the county roads in the particular county or, part thereof that may be agreed upon in the contract.

(2) The counties are authorized and empowered to enter into contracts with the commission.

(b) The contracts authorized by this section may provide for the use of the machinery and equipment belonging to the county, or of the machinery and the equipment belonging to the commission, or the machinery and equipment of both, in the construction, repair, and maintenance of county roads.

(c) No contract herein authorized shall be for a period extending beyond the end of the term for which the county judge of the contracting county was elected.

(d) Nothing contained in this section shall have the effect of adding any county roads to the state highway system, nor shall any contracts remove from the county court of the contracting county exclusive jurisdiction over the roads within that county.

(e) Nothing in this section shall reduce or diminish, or have any effect upon, the amount of money now paid by the state to the various counties for road purposes.

**History.** Acts 1953, No. 114, §§ 1-5;  
A.S.A. 1947, §§ 76-1034 — 76-1038.

## **27-66-102. Maintenance of roads under supervision of federal agency.**

If and when it becomes necessary, the Arkansas State Highway and Transportation Department will be permitted to expend highway maintenance funds for the maintenance and repair of highways not in the state highway system and which are constructed with public funds expended under the supervision of the Federal Highway Administration.

**History.** Acts 1937, No. 262, § 1; Pope's  
Dig., § 6529; A.S.A. 1947, § 76-508.

### **SUBCHAPTER 2 — ROAD DESIGNATION GENERALLY**

#### SECTION.

27-66-201. Worked roads.

27-66-202. Established roads.

27-66-203. Existing roads and military roads.

27-66-204. Certain direct routes to county courthouse.

#### SECTION.

27-66-205. Mail routes.

27-66-206. School bus routes.

27-66-207. Streets or roads dedicated to the public.

27-66-208. Land deeded to county.

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**Cross References.** Highway designation, construction, and maintenance, § 27-67-201 et seq.

**Effective Dates.** Acts 1859, No. 158, § 2: effective on passage.

Acts 1868, No. 10, § 2: effective on passage.

Acts 1871, No. 26, § 74: effective on passage.

Acts 1923, No. 461, § 3: Mar. 20, 1923. Emergency clause provided: "This act being necessary for the immediate preservation of the public peace, health and safety,

an emergency is hereby declared to exist and this act shall take effect and be in force from and after its passage and approval."

Acts 1923, No. 666, § 8: approved Mar. 23, 1923. Emergency clause provided: "This act being necessary for the public peace, health and safety, an emergency is declared and it shall take effect and be in force from and after its passage."

Acts 1947, No. 104, § 2: effective on passage.

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## **27-66-201. Worked roads.**

All public roads in the several counties in this state on which the several county courts have, from time to time, appointed overseers to work, and directed that hands should be apportioned therefor, shall be declared and deemed to be public roads, without regard to any informality of the several county courts, or either of them, by which they were ordered to be declared public roads in their several counties.



**History.** Acts 1859, No. 158, § 1, p. 188; C. & M. Dig., § 5223; Pope's Dig., § 6937; A.S.A. 1947, § 76-101.

## CASE NOTES

### ANALYSIS

Establishment Generally.  
Evidence.  
Failure to Work Road.  
Prescription.

### Establishment Generally.

It is not necessary that a public road be established by county court; rather, it can be established by dedication on part of the owner of the soil over which it runs, and the assent thereto and use thereof by the public, or by prescription. *Patton v. State*, 50 Ark. 53, 6 S.W. 227 (1887). See also *Fitzgerald v. Saxton*, 58 Ark. 494, 25 S.W. 499 (1894).

There was no public road when road was not legally established and the use by the public amounted to no more than use by license of the owner, even though overseers for the road were appointed, where no work was done on the road. *Jones v. Phillips*, 59 Ark. 35, 26 S.W. 386 (1894).

This section does not contain a limitation period; it means that a public road does not have to be established by a formal order of the county court, but that a prescriptive right-of-way can be established by the county working the road for a period of seven years. *Neyland v. Hunter*, 282 Ark. 323, 668 S.W.2d 530 (1984).

### Evidence.

In action for obstructing public road, evidence that it had been long used as a public road and the county and recognized it as such by making it a part of road district and appointing an overseer to work it constituted a prima facie showing of a statutory highway. *Howard v. State*, 47 Ark. 431, 2 S.W. 331 (1886).

In prosecution for obstruction of public road, evidence that road as established by court was enclosed by a fence and that no attempt was made to reopen it and that

public then used the land of another along the side of the fence and the land was worked by the overseers as the road and such use was continued for a period of over seven years showed a public road in the new location. *Patton v. State*, 50 Ark. 53, 6 S.W. 227 (1887); *Ayers v. State*, 59 Ark. 26, 26 S.W. 19 (1894).

### Failure to Work Road.

A conviction for failure to work a public road would not be sustained where there was no evidence either that the road was laid out by the federal government as a military road or that overseers had been appointed by the county court with directions that hands be apportioned to work the road, or that the public, with knowledge of the owner, had claimed and exercised the right of using the road as a public highway for a period of seven years. *Washington v. State*, 147 Ark. 135, 227 S.W. 28 (1921).

### Prescription.

Where a strip of land adjoining a block fronting on a railroad right-of-way was laid out by common owner as a street, although there was no formal dedication for public use, the use of the land generally by the public for more than 20 years gave rise to the right by prescription to the use of the roadway. *Magnolia Petro. Co. v. Langford*, 213 Ark. 746, 212 S.W.2d 22 (1948).

Gravel road that ran across appellant's property to appellee's property was properly declared to be a county road; the county had maintained and improved the road for longer than the prescriptive right-of-way time period of seven years and the road had been used as a mail route for over 20 years, which qualified the road for designation as a county road pursuant to § 27-66-205. *Frazier-Hampton v. Hesterly*, 89 Ark. App. 211, 201 S.W.3d 447 (2005).

### 27-66-202. Established roads.

All roads and highways established by any of the county courts of this state since November 1, 1865, as public roads and all public roads of this state upon which overseers have been appointed by any of the county courts of this state since November 1, 1865, are declared public roads and highways.

**History.** Acts 1868, No. 10, § 1, p. 34;  
C. & M. Dig., § 5224; Pope's Dig., § 6938;  
A.S.A. 1947, § 76-102.

### 27-66-203. Existing roads and military roads.

All roads in this state heretofore laid in pursuance of law, all roads heretofore laid out by the United States in this state and all public roads known as military roads, which have not been vacated according to law are declared public highways.

**History.** Acts 1871, No. 26, § 1, p. 56;  
C. & M. Dig., § 5222; Pope's Dig., § 6936;  
A.S.A. 1947, § 76-103.

### 27-66-204. Certain direct routes to county courthouse.

The county judge in his or her discretion may designate as a county road any road that is the most direct route to the county courthouse for ten (10) or more families if that road is graded and has been used by the general public as a road for at least two (2) years.

**History.** Acts 1923, No. 666, § 3; Pope's  
Dig., § 6971; Acts 1983, No. 165, § 1;  
A.S.A. 1947, § 76-104.

## RESEARCH REFERENCES

**Ark. L. Notes.** Foster, The County Road Quagmire: How to Establish the Existence of a County Road and Other Ingress, Egress Conundrums, 2008 Ark. L. Notes 33.

**U. Ark. Little Rock L.J.** Arkansas Law Survey, Freeman, Property, 8 U. Ark. Little Rock L.J. 197.

## CASE NOTES

### ANALYSIS

Purpose.  
Adverse Possession.  
Prescription.

### Purpose.

The purpose of this section and §§ 22-1-201, 27-66-205, 27-66-207, and 27-66-208 is to protect rural roads from hostile claims of adverse possessors. Neyland v.

Hunter, 282 Ark. 323, 668 S.W.2d 530 (1984).

### Adverse Possession.

Section 22-1-201, prohibiting adverse possession of public thoroughfares, this section, and § 27-66-205 must be interpreted as one act; in that context, § 27-66-205 obviously means that, if a road serves as a mail route, it is designated as a public road and cannot be acquired from

the county by adverse possession, while this section means that if a road is the most direct route to the county courthouse for 10 or more families, has been graded, and has been used by the public for two years or more it is classified as a public road and cannot be acquired by adverse possession. *Neyland v. Hunter*, 282 Ark. 323, 668 S.W.2d 530 (1984).

### **Prescription.**

Neither this section nor § 27-66-205 shortened the period for the ripening of a right to prescriptive use; both statutes are solely to protect rural roads from adverse possessors. *Neyland v. Hunter*, 282 Ark. 323, 668 S.W.2d 530 (1984).

**Cited:** *Johnson v. Wylie*, 284 Ark. 76, 679 S.W.2d 198 (1984).

## **27-66-205. Mail routes.**

The county judge in his or her discretion may designate as a county road any road that is used as a mail route or a free rural mail delivery route if the road is designated as a mail route by the proper postal authorities of the United States Government.

**History.** Acts 1923, No. 666, § 4; Pope's Dig., § 6972; Acts 1983, No. 165, § 2; A.S.A. 1947, § 76-105.

## **RESEARCH REFERENCES**

**U. Ark. Little Rock L.J.** Arkansas Law Survey, Freeman, Property, 8 U. Ark. Little Rock L.J. 197.

## **CASE NOTES**

### **ANALYSIS**

Purpose.  
Adverse Possession.  
County Roads.  
Mailbox.  
Prescription.

### **Purpose.**

The purpose of this section and §§ 22-1-201, 27-66-204, 27-66-207, and 27-66-208 is to protect rural roads from hostile claims of adverse possessors. *Neyland v. Hunter*, 282 Ark. 323, 668 S.W.2d 530 (1984).

### **Adverse Possession.**

Section 22-1-201, prohibiting adverse possession of public thoroughfares, § 27-66-204, and this section must be interpreted as one act; in that context, this section obviously means that, if a road serves as a mail route, it is designated as a public road and cannot be acquired from the county by adverse possession, while § 27-66-204 means that if a road is the most direct route to the county courthouse for 10 or more families, has been graded,

and has been used by the public for two years or more it is classified as a public road and cannot be acquired by adverse possession. *Neyland v. Hunter*, 282 Ark. 323, 668 S.W.2d 530 (1984).

### **County Roads.**

County road held not created. *Arkansas Game & Fish Comm'n v. Lindsey*, 292 Ark. 314, 730 S.W.2d 474 (1987).

Gravel road that ran across appellant's property to appellee's property was properly declared to be a county road pursuant to § 27-66-201; the county had maintained and improved the road for longer than the prescriptive right-of-way time period of seven years and the road had been used as a mail route for over 20 years, which qualified the road for designation as a county road pursuant to this section. *Frazier-Hampton v. Hesterly*, 89 Ark. App. 211, 201 S.W.3d 447 (2005).

### **Mailbox.**

Mail patron has a floating easement for the placement of a mailbox in the road's right-of-way dedicated for "public use." *Lawson v. Sipple*, 319 Ark. 543, 893 S.W.2d 757 (1995).



**Prescription.**

Neither § 27-66-204 nor this section shortened the period for the ripening of a right to prescriptive use; both statutes are solely to protect rural roads from adverse

possessors. *Neyland v. Hunter*, 282 Ark. 323, 668 S.W.2d 530 (1984).

**Cited:** *Johnson v. Wylie*, 284 Ark. 76, 679 S.W.2d 198 (1984).

**27-66-206. School bus routes.**

(a) The county judge in his or her discretion may designate as county roads those roads used as school bus routes.

(b) Upon declaring a road a county road pursuant to this section, the county judge shall take charge of the road and cause the road to be maintained and repaired the same as other county roads.

**History.** Acts 1923, No. 461, §§ 1, 2; 104, § 1; 1983, No. 166, §§ 1, 2; A.S.A. Pope's Dig., §§ 6969, 6970; Acts 1947, No. 1947, § 76-106, 76-107.

**CASE NOTES****ANALYSIS**

County Roads.  
Public Declarations.  
Public Usage.

**County Roads.**

County road held not created. *Arkansas Game & Fish Comm'n v. Lindsey*, 292 Ark. 314, 730 S.W.2d 474 (1987).

**Public Declarations.**

A county judge acted properly in declaring a private road to be a county road where the judge found that the road had been used as a school bus route for 10 years or longer and had been maintained by the county for an equal period. *Johnson*

*v. Wylie*, 284 Ark. 76, 679 S.W.2d 198 (1984).

**Public Usage.**

Where an owner permitted what might otherwise have been a private road to be used as a school bus route for upwards of 10 years and permitted the county to repair and maintain the road for a comparable period, he could not be heard to complain that his property was taken without compensation when the county judge declared the road to be a county road pursuant to this section; in effect, the declaration of public usage simply recognized what the owner's actions had already created by sufferance. *Johnson v. Wylie*, 284 Ark. 76, 679 S.W.2d 198 (1984).

**27-66-207. Streets or roads dedicated to the public.**

(a) The county judge in his or her discretion may designate as a county road any street or road dedicated to the public as a public thoroughfare, provided that a bill of assurance making the dedication is properly recorded.

(b) Unless a plat clearly reflects roads that are private, the county recorder shall not accept any plats in the unincorporated area of the county without the county court's acceptance of:

- (1) Roads for perpetual maintenance; and
- (2) Dedication of land for public purposes.

**History.** Acts 1923, No. 666, § 5; Pope's Dig., § 6973; Acts 1983, No. 463, § 1; A.S.A. 1947, § 76-108; Acts 2005, No. 861, § 1; 2007, No. 827, § 239.

**Amendments.** The 2007 amendment substituted "roads that are private" for "that roads are private roads" in (b).

## CASE NOTES

## ANALYSIS

Purpose.  
 County Roads.  
 Nature of Interests.  
 Prescription.  
 Railroad Right-of-Way.

**Purpose.**

The purpose of this section and §§ 22-1-201, 27-66-204, 27-66-205, and 27-66-208 is to protect rural roads from hostile claims of adverse possessors. *Neyland v. Hunter*, 282 Ark. 323, 668 S.W.2d 530 (1984).

**County Roads.**

County road held not created. *Arkansas Game & Fish Comm'n v. Lindsey*, 292 Ark. 314, 730 S.W.2d 474 (1987).

**Nature of Interests.**

Interest the public acquired by dedication of land for highway or street was merely an easement or right of passage over the soil; the original owner still retained the fee with all rights of property not inconsistent with public use. *Taylor v. Armstrong*, 24 Ark. 102 (1863) (decision under prior law).

**Prescription.**

A road became established as a public highway by prescription where the public, with knowledge of owner of soil, had claimed and continuously exercised the right of using it for a public highway for a period of seven years, unless it was so used by leave, favor, or mistake. *Howard v. State*, 47 Ark. 431, 2 S.W. 331 (1886); *Patton v. State*, 50 Ark. 53, 6 S.W. 227 (1887); *Fitzgerald v. Saxton*, 58 Ark. 494, 25 S.W. 499 (1894); *Ayers v. State*, 59 Ark. 26, 26 S.W. 19 (1894); *Jones v. Phillips*, 59 Ark. 35, 26 S.W. 386 (1894) (preceding decisions under prior law).

**Railroad Right-of-Way.**

Where municipal corporation granted to a railroad company a right-of-way along a street, without abandoning its use as a street, public had right to use the street as well as the railroad company, and rights of each had to be exercised with due regard to rights of the other. *Saint Louis, I.M. & S. Ry. v. Neely*, 63 Ark. 636, 40 S.W. 130 (1897) (decision under prior law).

**Cited:** *Gilbert v. Life & Cas. Ins. Co.*, 185 Ark. 256, 46 S.W.2d 807 (1932).

**27-66-208. Land deeded to county.**

The county judge in his or her discretion may designate as a county road any strip of ground deeded by the owners to the county for a public thoroughfare.

**History.** Acts 1923, No. 666, § 6; Pope's Dig., § 6974; Acts 1983, No. 463, § 2; A.S.A. 1947, § 76-109.

## CASE NOTES

## ANALYSIS

Purpose.  
 County Roads.

**Purpose.**

The purpose of this section and §§ 22-1-201, 27-66-204, 27-66-205, and 27-66-207 is to protect rural roads from hostile

claims of adverse possessors. *Neyland v. Hunter*, 282 Ark. 323, 668 S.W.2d 530 (1984).

**County Roads.**

County road held not created. *Arkansas Game & Fish Comm'n v. Lindsey*, 292 Ark. 314, 730 S.W.2d 474 (1987).

### SUBCHAPTER 3 — HIGHWAY, ROAD, AND STREET SYSTEMS CLASSIFICATION LAW

**SECTION.**

- 27-66-301. Title.
- 27-66-302. Purpose.
- 27-66-303. Policy.
- 27-66-304. Definitions.
- 27-66-305. Designation, review, and revision.

**SECTION.**

- 27-66-306. Functional classes.
- 27-66-307. Continuing study.
- 27-66-308. Satisfaction of local planning requirements.

**Preambles.** Acts 1973, No. 308 contained a preamble which read: "Whereas, under directives of the Congress of the United States and the General Assembly of the State of Arkansas, comprehensive studies were made by the State Highway Commission in cooperation with the Legislative Council and the Cities and Counties of the State; and

"Whereas, these studies found the establishment of functional classifications of public highways, roads and streets of the State of Arkansas and the establishment of standards for such functional classifications to be highly desirable as a rational basis for legislative action and an indispensable tool for fiscal, engineering and administrative decisions by State, County and Municipal officials; and

"Whereas, the Congress of the United States has required that Federal-aid planning be correlated with functional classi-

fication principles;

"Now, therefore...."

**Effective Dates.** Acts 1973, No. 308, § 10: Mar. 12, 1973. Emergency clause provided: "It has been found and it is hereby declared by the General Assembly that with enactment of this act, Arkansas highway, road, and street administrators will be provided with the proper management tool to carry out sound, modern planning methods, procedures and techniques for the proper administration, management, and improvement of the State Highway, County Road, and Municipal Street Systems of the State and to assure continuing study and updating of the planning process. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

#### 27-66-301. Title.

This subchapter may be known as the "Arkansas Highway, Road, and Street Systems Classification Law".

**History.** Acts 1973, No. 308, § 1; A.S.A. 1947, § 76-2701.

#### 27-66-302. Purpose.

It is the purpose of this subchapter to promote the general welfare of the traveling public and the Arkansas economy.

**History.** Acts 1973, No. 308, § 2; A.S.A. 1947, § 76-2702.



**27-66-303. Policy.**

(a) It is the policy of the State of Arkansas to adopt sound modern planning methods, procedures, and techniques for the proper administration, management, and improvement of the state highway, county road, and municipal street systems of the state and to assure continuing study and updating of this planning process.

(b) It is the legislative intent of this subchapter to functionally classify all elements of the public highways, roads, and streets in the Arkansas network according to level of service, with uniform improvement standards for each class.

**History.** Acts 1973, No. 308, § 3; A.S.A. 1947, § 76-2703.

**27-66-304. Definitions.**

(a) As used in this subchapter, unless the context otherwise requires, “functional classification” means the grouping of public ways by likeness of service or purpose into classes or systems according to the character of service they are intended to provide. The frame of reference is the sense of service offered to and expected by the road user. Neither ownership nor administrative responsibility is relevant in grouping by function.

(b) All definitions of terms adopted for the 1972 National Transportation Needs Study are incorporated by reference in this subchapter. The term “functional classification”, defined herein, is in accordance with the definition contained in the study reports.

**History.** Acts 1973, No. 308, § 4; A.S.A. 1947, § 76-2704.

**27-66-305. Designation, review, and revision.**

(a) All public highways, roads, and streets in Arkansas are designated in accordance with the findings of the functional classification study conducted in 1968 and 1970 and identified by maps on file in the office of the State Highway Commission and the offices of the county road and municipal street administrative officials.

(b) Recommended uniform design standards shall be established for the improvement of each functional class.

(c) The functional classification of public highways, roads, and streets shall be examined and reviewed at least every five (5) years by the commission in cooperation with the local governments.

(d) Revisions shall be made as are found in accordance with the criteria governing functional classification.

**History.** Acts 1973, No. 308, § 5; A.S.A. 1947, § 76-2705.

**27-66-306. Functional classes.**

The six (6) functional classes by levels of service that are made applicable to the network of public highways, roads, and streets in Arkansas are as follows:

(1) Class I

Rural Systems: Interstate freeways.

Municipal Systems: Interstate freeways.

Level of Service: Provide basic interstate service; link major cities;

(2) Class II

Rural Systems: Other principal arterial highways.

Municipal Systems: Other freeways and expressways.

Level of Service: Provide high level of interstate and intrastate service; connect major generators of internal city traffic;

(3) Class III

Rural System: Minor arterial highways.

Municipal Systems: Other principal arterial streets.

Level of Service: Serve trans-state travel to and through principal cities; provide a system for the major traffic generators within a city;

(4) Class IV

Rural Systems: Major collector roads.

Municipal Systems: Minor arterial streets.

Level of Service: Provide connections to and through the large centers of population within the state;

(5) Class V

Rural Systems: Minor collector roads.

Municipal Systems: Collector streets.

Level of Service: Provide intercounty service; serve the economic and state park areas not served by a higher system; collect and distribute traffic to and from major streets; provide intracounty service to and into population centers and other recreational and industrial areas; and

(6) Class VI

Rural Systems: Local roads.

Municipal Systems: Local streets.

Level of Service: Service small rural communities; provide access to residential areas, subdivisions, and neighborhoods within cities; provide direct access to adjacent properties in rural areas and within cities.

**History.** Acts 1973, No. 308, § 5; A.S.A. 1947, § 76-2705.

**27-66-307. Continuing study.**

(a) The Arkansas study-classification segment of the 1972 National Transportation Needs Study is established on a continuing basis to conform to the congressional directive of Public Law 89-139.

(b) The State Highway Commission shall continue to keep current this vital information and make it available to cities and counties upon request.

**History.** Acts 1973, No. 308, § 6; A.S.A. 1947, § 76-2706. **U.S. Code.** Public Law 89-139, referred to herein, is codified in notes preceding and following 23 U.S.C. § 101. However, it was repealed, in part, by Public Law 97-424 on January 6, 1983.

**27-66-308. Satisfaction of local planning requirements.**

Acceptance of the functional classification plan by the responsible local officials will satisfy the transportation requirements of Acts 1937, No. 246 [repealed] for counties and §§ 14-56-401 — 14-56-425 for cities.

**History.** Acts 1973, No. 308, § 7; A.S.A. 1947, § 76-2707. **Cross References.** County planning boards, § 14-17-201 et seq.

**SUBCHAPTER 4 — PRIVATE ROADS**

SECTION.

- 27-66-401. Establishment.
- 27-66-402. Duty of viewers.
- 27-66-403. Court order.

SECTION.

- 27-66-404. Penalty for obstructing.
- 27-66-405. Limitation of authority.

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**Effective Dates.** Acts 1871, No. 26, § 74: effective on passage.  
Acts 1897, No. 17, § 4: effective on passage.  
Acts 1927, No. 216, § 2: Mar. 23, 1927.  
Acts 1955, No. 125, § 2: approved Mar. 2, 1955. Emergency clause provided: "Whereas, the time for appeal from such an order of the County Court now fixed by the laws of the State of Arkansas is deemed excessive and is causing undue delay, and this act being necessary to the public peace, health and safety of the people of the State of Arkansas, an emergency is hereby declared to exist, and this act shall be in full force and effect from and after its passage."

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**27-66-401. Establishment.**

- (a)(1) When the lands, dwelling house, or plantation of any owner is so situated as to render it necessary to have a road from such lands, dwelling house, or plantation to any public road or navigable water-course over the lands of any other person and the other person refuses to allow that owner the road, the owner may petition the county court to appoint viewers to lay off the road, provided the owner gives written notice to the person twenty (20) days before application to the court and attaches the written notice to the petition.
- (2) The written notice shall include the amount of payment the owner offers for the road.
- (b) The petition for an easement for ingress and egress to and from the petitioner's lands over, through, and across the respondent's lands



to any public road or navigable watercourse shall be filed with the clerk of the county court and shall allege with particularity facts demonstrating that:

(1) The written notice was provided by the petitioner to the respondent twenty (20) days before application to the court;

(2) The respondent refused to convey to the petitioner the requested access easement; and

(3) The petitioner lacked the legal right of ingress and egress to and from his or her lands across the respondent's lands or otherwise to a public road.

(c) Copies of abstracts, deeds, or plats referenced in the petition shall be attached to the petition.

(d) After the petition is filed, the county court shall issue a notice setting the time, date, and location of a preliminary hearing.

(e)(1) In accordance with the Arkansas Rules of Civil Procedure, the petitioner shall serve the resident or nonresident respondent with a:

(A) Summons;

(B) Copy of the petition and any exhibits; and

(C) Copy of the court notice of the preliminary hearing.

(2) If service is not obtained, the notice shall be published one (1) time per week for two (2) consecutive weeks in a newspaper of general circulation in the county at the petitioner's expense. If there is no newspaper of general circulation in the county, the notice shall be posted at the county courthouse.

(f)(1) The court may dismiss the case without prejudice and allow the petition to be refiled within one (1) year from dismissal if the court determines at the preliminary hearing that:

(A) Required notices and service have not been provided to the respondent; or

(B) The petition fails to sufficiently demonstrate the requirements of subsection (b) of this section.

(2)(A) If the court determines at the preliminary hearing that required notices and service have been provided to the respondent and the petition sufficiently demonstrates the requirements of subsection (b) of this section, the court shall appoint viewers.

(B) If viewers are appointed by the court, the court shall:

(i) Issue a preliminary order directing the petitioner to deposit into the registry of the court an estimated sum sufficient for payment of damages and for payment of the costs and expenses accruing on account of the petition, notice, view, and survey for the access easement; and

(ii) Set the time, date, and location of the evidentiary hearing.

(C) Either party may file with the court legal instruments, plats, surveys, or other documentary evidence to be reviewed by the viewers.

(D) The parties shall immediately open their property to inspection by the viewers and surveyors.

**History.** Acts 1871, No. 26, § 60, p. 56; C. & M. Dig., § 5250; Pope's Dig., § 6976; A.S.A. 1947, § 76-110; Acts 2009, No. 747, § 1.

**Amendments.** The 2009 amendment rewrote and redesignated the existing text, and added (b) through (f).

## CASE NOTES

### ANALYSIS

Constitutionality.

In General.

Construction.

Maintenance of Road.

Necessity.

Recovery for Right-of-Way.

Relocation.

Roads Public.

### Constitutionality.

This section is not unconstitutional as allowing a taking for private use, since a road established under this section is deemed a public road because anyone may use it; an individual who is landlocked and proceeds under this section has no other alternatives available to him and, if he were not granted access to his land under such a statute, he would have no remedy. *Dowling v. Erickson*, 278 Ark. 142, 644 S.W.2d 264 (1983).

The separation of powers doctrine was not violated by allowing the county court to exercise jurisdiction over roads within a city. *Yates v. Sturgis*, 311 Ark. 618, 846 S.W.2d 633 (1993).

### In General.

This section authorizes the establishment of a private road for the benefit of the owner of lands, whether occupied or unoccupied, and the road established thereunder becomes a public road in the sense that it is open to the use of all who see fit to use it. *Houston v. Hanby*, 149 Ark. 486, 232 S.W. 930 (1921); *Parrott v. Fullerton*, 209 Ark. 1018, 193 S.W.2d 654 (1946).

It is not necessary for the petitioner to show an absolute necessity for such road by showing that he had no other means of reaching the public highway or watercourse. *Houston v. Hanby*, 149 Ark. 486, 232 S.W. 930 (1921); *Bean v. Nelson*, 307 Ark. 24, 817 S.W.2d 415 (1991).

This section requires an owner to show that the other landowner refused them access to the specific road that the owner requested, not merely that the other land-

owner refused the owner access to just any road on his land. *Bean v. Nelson*, 307 Ark. 24, 817 S.W.2d 415 (1991).

The General Assembly was within its province in authorizing the county court to exercise the power of eminent domain to give access to landlocked tracts, and it clearly did so in this section. *Yates v. Sturgis*, 311 Ark. 618, 846 S.W.2d 633 (1993).

Children and heirs sought to build a private road; they claimed that county court's ruling was based on fraud because viewers who inspected the property had not actually made any factual findings that the children and heirs had a reasonable means of access to their property, as required by § 27-66-401 et seq. Nevertheless, the county court denied the children's and heirs' Ark. R. Civ. P. 60 motion, and the circuit court had no jurisdiction to hear the Rule 60 motion because the appeal to the circuit court was untimely. *Barnett v. Howard*, 363 Ark. 150, 211 S.W.3d 490 (2005).

### Construction.

The language of this section does not indicate that it was intended to overrule the common-law remedy of granting a "way of necessity," and it did not abrogate the jurisdiction conferred by Ark. Const., Art. 7, § 15 [repealed] to the chancery court to decide such matters of equity. *Powell v. Miller*, 30 Ark. App. 157, 785 S.W.2d 37 (1990).

### Maintenance of Road.

While a private road may be a public road in the sense that anyone who has occasion to use the road may do so, it is still a private road, and the individual who petitions a county court for the establishment of a private road out of a landlocked tract is responsible for the maintenance of that private road. *Yates v. Sturgis*, 311 Ark. 618, 846 S.W.2d 633 (1993).

A city does not have to accept the control and supervision and concurrent cost of maintenance of a city street unless it



chooses to do so. *Yates v. Sturgis*, 311 Ark. 618, 846 S.W.2d 633 (1993).

#### **Necessity.**

Where landowners filed a petition alleging that they had no reasonable means of access to their land and asking that a road be established across the adjacent property owned by a school district, but the evidence established that the petitioners did have an alternate, though expensive, route available to them, while the proposed road, though less costly, would intersect a school parking lot and endanger the school children on the property, the trial court was not clearly erroneous in determining that the proposed road was not necessary within the meaning of this section. *Armstrong v. Harrell*, 279 Ark. 24, 648 S.W.2d 450 (1983).

While the county court does have jurisdiction to create a way of necessity in the form of a public road pursuant to this section, a landowner who is without legal access to his property and who once had a right of access or could have had a right of access via what was once part of his own land and which now belongs to another, upon the showing of certain prerequisites, is entitled under common law to either an easement by necessity or an easement by implication. *Powell v. Miller*, 30 Ark. App. 157, 785 S.W.2d 37 (1990).

Circuit court properly upheld a county court order denying appellants' suit to establish a private roadway across appellees' land where appellants were interested in selling the property to a hunting club, thereby increasing the burden to appellees in the number of people driving over the land. *Burton v. Hankins*, 98 Ark. App. 51, 250 S.W.3d 255 (2007).

#### **Recovery for Right-of-Way.**

The landowner from whom a right-of-way is taken is entitled to recover for the right-of-way actually taken and, the damages, if any, to the balance of the land. *Arkansas Game & Fish Comm'n v. Lindsey*, 299 Ark. 249, 771 S.W.2d 769 (1989).

#### **Relocation.**

Private road established by court proceeding in 1933 could not be relocated in 1951 where it came to dead end at home of person and was his only outlet and he and his predecessors had had uninterrupted use of road since its establishment. *White v. Grimmett*, 223 Ark. 237, 265 S.W.2d 1 (1954).

#### **Roads Public.**

A road established under this section, although referred to in the statute as a private road, will be deemed a public road because anyone who has occasion to use the road may do so. *Dowling v. Erickson*, 278 Ark. 142, 644 S.W.2d 264 (1983).

There is a long established presumption under this section that a road will be for public use; there is no similar precedent under §§ 27-67-301 and 27-67-302 when condemning for highway purposes. *Dowling v. Erickson*, 278 Ark. 142, 644 S.W.2d 264 (1983).

**Cited:** *St. Louis S. R. Co. v. Wallace*, 217 Ark. 278, 229 S.W.2d 659 (1950); *Burdess v. United States*, 553 F. Supp. 646 (E.D. Ark. 1982); *Young v. Energy Transp. Sys.*, 278 Ark. 146, 644 S.W.2d 266 (1983); *Riffle v. Worthen*, 327 Ark. 470, 939 S.W.2d 294 (1997); *Barnett v. Howard*, 363 Ark. 150, 211 S.W.3d 490 (2005).

### **27-66-402. Duty of viewers.**

(a) Viewers shall take the same oath and shall be governed in all respects as viewers appointed to public roads are governed under this act.

(b) They shall examine the route proposed for the road and any other route which they may deem proper.

(c) If they or a majority of them are of the opinion that a road is necessary and proper, as prayed in the petition, they shall lay out and describe the road in a manner that produces the least inconvenience to the parties through whose land the road shall pass.

(d)(1)(A) The viewers shall make a written report to the county court, describing the route of the road and the land through which it shall pass to allow location and identification of the access easement by



land records, naming the owner, if known, and by decision of a majority of the viewers the damages sustained by each owner of lands through which the road passes. The damages shall include the value of each owner's land sought to be appropriated.

(B) The parties shall stipulate to or dispute the report of the viewers.

(2) The measure of damages shall be the difference in the fair market value of the lands immediately before the access easement is ordered and the fair market value of the lands after the access easement is ordered.

(e) The report shall be filed with the county clerk for the records of the county court.

(f)(1) A person who renders services under this subchapter as a viewer or reviewer, chain carrier, marker, or surveyor shall be paid reasonable costs and expenses based upon the current market rate for each day necessarily employed.

(2) Payments are to be charged as costs and expenses against the funds deposited by the petitioner.

(3) The amount due each person and the number of days employed shall be certified under oath by the viewers.

(4) The court by order may direct the county clerk to receipt payment by the petitioner of the directed sum into the registry of the court and to issue payment.

**History.** Acts 1871, No. 26, § 60, p. 56; C. & M. Dig., § 5250; Pope's Dig., § 6976; A.S.A. 1947, § 76-110; Acts 2009, No. 747, § 1.

**Amendments.** The 2009 amendment inserted (d)(1)(B) and (d)(2), redesignated the remaining text of (d) accordingly, and inserted "to allow location and identification of the access easement by land records" and "by decision of a majority of

the viewers" in (d)(1)(A); substituted "filed with the county clerk for" for "recorded on" in (e); added (f); and made minor stylistic changes.

**Meaning of "this act".** Acts 1871, No. 26, codified as §§ 14-298-101 — 14-298-106, 14-298-107 [repealed], 14-298-108 — 14-298-119, 14-298-123, 14-298-124, 26-79-105, 27-66-203, 27-66-401 — 27-66-403.

## CASE NOTES

### ANALYSIS

Construction.

Damages.

Improper Proceedings.

Least Inconvenient Route.

Necessity.

Statute of Limitations.

Sufficiency of Report.

### Construction.

A basic rule in construing a statute is to give consistent and uniform interpretations to that statute so that it does not mean one thing at one time and something else at another time and, as time

passes, the interpretation given a statute becomes a part of the statute itself. *Nation v. Ayres*, 340 Ark. 270, 9 S.W.3d 512 (2000).

### Damages.

Where the road viewers testified that in assessing damages of \$2,500 to the landowner's property, which was taken for a proposed road, they considered the value of the land taken, the fact that fences would have to be built, and the "nuisance value," and the affected landowner did not submit any evidence nor did she refute the qualifications of the viewers or their testimony, the trial court's assessment of

damages totalling \$2,500 was supported by the evidence. *Castleman v. Dumas*, 279 Ark. 463, 652 S.W.2d 629 (1983).

### **Improper Proceedings.**

Where a party aggrieved by the establishment of a private road through his lands petitions the county court for the appointment of reviewers, and they are appointed, and in the order of appointment they are directed to meet for the purpose of reviewing the road at a time named and to report at a stated term of the court and they meet at an earlier time and report at an earlier term of the court and the report is confirmed, the petitioner, being surprised thereby and deprived of the opportunity of appealing, may quash such proceedings on certiorari from the circuit court. *Roberts v. Williams*, 13 Ark. 355 (1853) (decision under prior law).

### **Least Inconvenient Route.**

Where the road viewers, the county court, and the circuit court all found that the proposed road was necessary to give the petitioners a means of ingress and egress to their property and that the proposed road was the most convenient and the least injurious to all parties involved, including the landowner on whose land the road would be built, the landowner's unsubstantiated argument that she offered and would have preferred the road on another portion of her property was not supported by the evidence and was properly rejected. *Castleman v. Dumas*, 279 Ark. 463, 652 S.W.2d 629 (1983).

Although the property had some frontage on a navigable watercourse, it was not reasonable to require the landowner and those wishing to visit her to make the trip by boat; therefore, the landowner was entitled to a right-of-way giving her access from a public road to her landlocked tract. *Attaway v. Davis*, 288 Ark. 478, 707 S.W.2d 302 (1986).

### **Necessity.**

In determining whether a road is necessary, the county court should take into consideration not only the convenience it will be to the limited number of people it serves, but also the injury and inconvenience it will occasion to the owner of the land through which it is proposed to extend the road. *Houston v. Hanby*, 149 Ark. 486, 232 S.W. 930 (1921); *Mohr v. Mayberry*, 192 Ark. 324, 90 S.W.2d 963 (1936).

Necessity for proposed private road that would split adjoining owner's farm in half and cut him off from his pasture and water and cause him to maintain fences and gates did not exist where owner seeking road could get out to main highway by traveling additional distance through his own land. *Mohr v. Mayberry*, 192 Ark. 324, 90 S.W.2d 963 (1936).

Where petitioner could have ingress and egress if a road were established on his own land, but a road thus located would cross a slough and require a bridge and the cost of drainage and filling would be prohibitive, finding of necessity for the establishment of a road over another's land was sustained by the evidence. *Roth v. Dale*, 206 Ark. 735, 177 S.W.2d 179 (1944).

In an action by plaintiff to establish a private road across defendant's land to give access to a portion of plaintiff's land divided from the rest by a creek which, at flood stage, rendered the separated portion inaccessible, evidence of a crossing built across the same creek on defendant's land was admissible to show the feasibility of building a similar crossing on plaintiff's land so as to render the private road across defendant's land unnecessary. *Riggs v. Bert*, 245 Ark. 515, 432 S.W.2d 852 (1968).

Where a road across a low-water bridge could be used except at high water and a mail road was usable then, there was substantial evidence to support the jury's finding that there was no necessity for a private roadway on the property. *Ahrens v. Harris*, 250 Ark. 938, 468 S.W.2d 236 (1971).

What the petitioner must show is a reasonable necessity for a road, not an absolute necessity. *Attaway v. Davis*, 288 Ark. 478, 707 S.W.2d 302 (1986).

Although the adjacent landowners insisted that they had been willing to permit the owner of a landlocked tract to reach her property by using a second trail that crossed their land and then another landowner's property, any such use of neighboring property would be permissive and revocable; therefore, the owner of the landlocked tract was entitled to obtain a permanent right-of-way by proceeding under this section and paying what the viewers fixed as reasonable compensation. *Attaway v. Davis*, 288 Ark. 478, 707 S.W.2d 302 (1986).



The circuit court clearly gave more weight to the findings of the appointed viewer than to the testimony of the private contractor in determining that a private road following the railroad bed was necessary. *Nation v. Ayres*, 340 Ark. 270, 9 S.W.3d 512 (2000).

#### **Statute of Limitations.**

No statute of limitations is applicable to an action under this section because the right to obtain access arises from the status as a landlocked owner and is of a continuing nature. *Attaway v. Davis*, 288 Ark. 478, 707 S.W.2d 302 (1986).

#### **Sufficiency of Report.**

No valid and binding order could be made by the county court establishing a private road where the report of the com-

missioners failed to advise the county court in pursuance of the statute of the ownership of the land and of the damages to be sustained by each owner through whose lands the road was laid out. *Roberts v. Williams*, 15 Ark. 43 (1854) (decision under prior law).

It is error for a county court to order the establishment of an access road that is not in accordance with the report of the viewers. *Bowden v. Oates*, 248 Ark. 577, 452 S.W.2d 831 (1970).

**Cited:** *St. Louis S. R. Co. v. Wallace*, 217 Ark. 278, 229 S.W.2d 659 (1950); *Burdess v. United States*, 553 F. Supp. 646 (E.D. Ark. 1982); *Young v. Energy Transp. Sys.*, 278 Ark. 146, 644 S.W.2d 266 (1983); *Burton v. Hankins*, 98 Ark. App. 51, 250 S.W.3d 255 (2007).

### **27-66-403. Court order.**

(a)(1) If the petitioner has not complied with the court's order under § 27-66-401 and paid into the registry of the county court the estimated sum, the court may dismiss the case without prejudice and provide that the matter may be refiled within one (1) year from dismissal in accordance with the Arkansas Rules of Civil Procedure.

(2) If during the pendency of the proceedings the county court determines that the circuit court has jurisdiction over the matter, the county court may stay the proceedings or dismiss the case without prejudice and provide that the matter may be refiled within one (1) year from dismissal in accordance with the Arkansas Rules of Civil Procedure.

(3)(A) If the petitioner complies with the court's order under § 27-66-401 and deposits into the registry of the county court the estimated sum, the evidentiary hearing may be held and the opportunity to present evidence and cross-examine witnesses.

(B)(i) If after considering the report of the viewers, the evidence, the law, and all other proper and sufficient matters the court is of the opinion that it is necessary for the petitioner to have the road from his or her lands, dwelling house, or plantation to the public road or navigable watercourse, an order is to be made establishing the road not to exceed fifty feet (50') in width and determining the damages sustained by each owner of lands through which the access easement passes.

(ii)(a) The access easement of ingress and egress to and from the petitioner's lands to, through, over, and across the respondent's lands shall be described in the final order or judgment of the court and shall be appurtenant to the petitioner's lands.

(b)(1) The order shall direct return of excess funds, if any, to the petitioner and any further deposits necessary to be made by the petitioners for the payment of all costs and expenses, including



reasonable attorney's fees and costs, accruing and remaining unpaid on account of the petition for the road, and all things relating thereto and following therefrom, including the view and survey of the road and damages sustained by each owner of the lands over which the road passes.

(2)(A) If the respondent substantially prevails on the disputed issues in the case, the court shall award reasonable attorney's fees and costs to the respondent.

(B) In determining whether the respondent substantially prevails on the disputed issues, the court shall consider the respondent's success on the merits regarding the:

- (i) Necessity of the road;
  - (ii) Route of the road;
  - (iii) Width of the road; and
  - (iv) Damages to the lands over which the road passes.
- (c) The order shall state that:

(1) The respondent retains title to the lands over which the road passes; and

(2) The road is for an access easement only and is not an easement for any other purpose, including a public utility.

(iii) The petitioner shall be solely responsible for the maintenance of the road established under this subchapter.

(iv) The respondent shall have no responsibility for the maintenance of the road established under this subchapter.

(v) A user of the road does so at his or her own risk and peril and does not have the right to file a cause of action against the petitioner or respondent for any injury to the user or the user's property.

(b) Either party may appeal to the circuit court from the final order or judgment of the county court within thirty (30) days from the entry of the order and not thereafter.

**History.** Acts 1871, No. 26, § 61, p. 56; C. & M. Dig., § 5251; Acts 1927, No. 216, § 1; Pope's Dig., § 6977; Acts 1955, No. 125, § 1; A.S.A. 1947, § 76-111; Acts 2009, No. 747, § 1.

**Amendments.** The 2009 amendment rewrote the section.

## CASE NOTES

### ANALYSIS

#### Appeals.

#### Invalid Orders.

#### Appeals.

Even if the trial court were correct in calculating the appeal time from the date appellant's attorney received notice of the order, rather than from the day of its rendition as provided by this section, still the appellants had notice for more than 60

days when they filed notice of their appeal, and therefore they were late in filing the appeal. *Ricci v. Poole*, 253 Ark. 324, 485 S.W.2d 728 (1972).

Even assuming that subsection (b) of this section applied and appellants had 60-days to appeal the county court order denying their petition to establish a private road, the filing of the notice of appeal would have been effective only if appellants had filed the record on that date, but they did not do so and the filing of the

notice of appeal alone was ineffective to perfect the appeal; thus, the appeal was properly dismissed. *Barnett v. Howard*, 79 Ark. App. 293, 94 S.W.3d 342 (2002), *aff'd*, 353 Ark. 756, 120 S.W.3d 564 (2003).

Landowners' time for filing their appeal to the circuit court was governed by Ark. Inferior Ct. R. 9 (now District Ct. R. 9); even assuming that the 60-day provision of subsection (b) of this section applied, the manner or procedure for perfecting the appeal would still be controlled by Rule 9, and the landowners failed to file their notice of appeal in a timely manner, and the filing of the notice of appeal alone was ineffective to perfect the appeal. *Barnett v. Howard*, 353 Ark. 756, 120 S.W.3d 564 (2003).

#### **Invalid Orders.**

An order of the county court establishing a private road for plaintiff over defen-

dant's land to the highway which contained a description of the location of the road so vague that the road could not be located from an examination of the records and made no finding with respect to damages was invalid. *Armstrong v. Cook*, 243 Ark. 230, 419 S.W.2d 308 (1967).

An order of the county court directing the establishment of a road along the east 30 feet of the west half of the east half of the quarter section and that it be located immediately west of a fence that "reportedly" ran along the line without evidence that the fence did so run was erroneous. *Bowden v. Oates*, 248 Ark. 577, 452 S.W.2d 831 (1970).

**Cited:** *Hoover v. Smith*, 248 Ark. 443, 451 S.W.2d 877 (1970).

### **27-66-404. Penalty for obstructing.**

(a) If any person obstructs a road established under the laws of this state by felling any trees across it or by placing an obstruction on the road, he or she shall be guilty of a Class C misdemeanor.

(b) The person also shall forfeit one hundred dollars (\$100) for every day he or she allows the obstruction to remain after he or she has been notified to remove it.

**History.** Acts 1897, No. 17, § 3, p. 24; C. & M. Dig., § 5505; Pope's Dig., § 7147; A.S.A. 1947, § 76-112; Acts 2009, No. 747, § 1.

**Amendments.** The 2009 amendment redesignated and rewrote the section.

### **27-66-405. Limitation of authority.**

A county court may not grant an easement for ingress and egress over, through, or across a railroad right-of-way under this subchapter.

**History.** Acts 2009, No. 747, § 1.

## **SUBCHAPTER 5 — PROTECTION OF ROAD SURFACES**

#### **SECTION.**

27-66-501. Classification of roads by weight of vehicles used thereon.

27-66-502. License required for use of rough metal tires.

27-66-503. Penalty.

27-66-504. Civil liability.

#### **SECTION.**

27-66-505. Prohibition on use of heavily loaded vehicles during emergencies.

27-66-506. [Repealed.]

27-66-507. Bond for driving heavy oil and gas equipment.

**Cross References.** Weight regulations, § 27-35-101.

**Preambles.** Acts 1949, No. 172 contained a preamble which read: "Whereas, great damage is being done to the county highways by the operation thereon of heavily loaded buses, trucks, trailers and other vehicles, during and following times of unusually heavy or long continued rain-falls; floods, snows, thaws, freezes and other emergencies, causing great financial loss to the various counties of the State; and

"Whereas, when the roadbeds and surfaces of the county roads have been softened by the unusual effects of the elements and emergencies above referred to and are therefore much more easily damaged than in times of normal weather conditions; and

"Whereas, under the Constitution of the State of Arkansas the county court is given original, exclusive jurisdiction in all matters of county roads and bridges, and

matters affecting the internal welfare of the counties;

"Therefore...."

**Effective Dates.** Acts 1919 (2nd Ex. Sess.), No. 222, § 6: effective on passage. Emergency declared. Approved Oct. 20, 1919.

Acts 1949, No. 172, § 5: approved Feb. 25, 1949. Emergency clause provided: "Whereas, great damage is being done to the county highways of the State by the operation thereon of heavily loaded vehicles during times when an emergency exists, such as set out in this act; and

"Whereas, counties are suffering a great financial loss thereby; and

"Whereas, such emergencies are likely to happen at any time, and this act being necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist and this act shall be in full force and effect from and after its passage."

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## **27-66-501. Classification of roads by weight of vehicles used thereon.**

(a) Exclusive of city streets, state highways, or interstates, a county judge may post weight limits on public bridges in his or her jurisdiction in connection with federally mandated bridge inspections.

(b) Posted weight limit signs shall be in accordance with state and federal law.

(c)(1) It is unlawful for a person to drive, operate, or move a motor vehicle, an object, or a contrivance or for an owner of a motor vehicle, object, or contrivance to cause or permit the motor vehicle, object, or contrivance of a size or weight exceeding the posted weight limit to be driven, operated, or moved .

(2) A person or an owner operating a motor vehicle, an object, or a contrivance under an overweight permit issued by the Arkansas State Highway and Transportation Department is exempt from penalty under subdivision (c)(1) of this section.

(d) A violation of this section is a Class C misdemeanor.

(e) Even if authorized by an overweight permit issued by the Arkansas State Highway and Transportation Department, a person or an owner operating, driving, or moving a vehicle, an object, or a contrivance upon a public bridge shall be liable for all damage that the public bridge may sustain as a result of:

(1) Careless, negligent, or illegal operation, driving, or moving of a vehicle, an object, or a contrivance; or



(2) Operation, driving, or moving of a vehicle, object, or contrivance of excessive width or weighing in excess of the maximum weight limits in this chapter.

**History.** Acts 1919 (2nd Ex. Sess.), No. 222, §§ 2, 3, p. 4253; C. & M. Dig., §§ 5510, 5511; Pope's Dig., §§ 7152, 7153; A.S.A. 1947, §§ 76-122, 76-123; Acts 2007, No. 453, § 1; 2009, No. 483, § 7.

**Amendments.** The 2007 amendment rewrote the section.

The 2009 amendment rewrote (c)(1); inserted "object, or contrivance" in (c)(2); and made a related change.

## 27-66-502. License required for use of rough metal tires.

The using, driving, or operating upon any improved hard-surfaced public highway of this state of any tractor, truck, automobile, or other vehicle having corrugated, spiked, jointed, or other rough-surfaced metal tires is prohibited without first procuring from the county judge of the county in which the road is situated a license permitting such use or operation.

**History.** Acts 1919 (2nd Ex. Sess.), No. 222, § 1, p. 4253; C. & M. Dig., § 5509;

Pope's Dig., § 7151; A.S.A. 1947, § 76-121.

## CASE NOTES

### Civil Liability.

Conviction for violation of this section is not a condition precedent to civil liability.

Farm Bureau Lumber Corp. v. State, 211 Ark. 95, 199 S.W.2d 593 (1947).

## 27-66-503. Penalty.

Any person violating § 27-66-502 or, after publication of the notices required above, using, driving, or operating on any road or highway any vehicle, loaded or empty of greater weight than that described or provided for in such order or classification as the commission shall have made with reference to a road or highway, shall be deemed guilty of a misdemeanor. Upon conviction, that person shall be fined in any sum not less than twenty-five dollars (\$25.00) nor more than one hundred dollars (\$100). Each day's use of any such vehicle shall constitute a separate offense.

**History.** Acts 1919 (2nd Ex. Sess.), No. 222, § 4, p. 4253; C. & M. Dig., § 5512;

Pope's Dig., § 7154; A.S.A. 1947, § 76-124.

## 27-66-504. Civil liability.

In addition to the penalty prescribed in § 27-66-503, the person convicted of violation of §§ 27-66-501 — 27-66-504, or of the orders of classifications of the commission shall be liable in a civil action for all damage occasioned or caused by such violation. However, as to a special trip for the movement of some particular thing or vehicle from one (1) location to another, the fine or penalty provided in § 27-66-503 shall not apply, but that person shall be civilly liable to the proper county or road

improvement district for all damages which he may occasion to the public highway over which such movement is made.

**History.** Acts 1919 (2nd Ex. Sess.), No. Pope's Dig., § 7155; A.S.A. 1947, § 76-222, § 5, p. 4253; C. & M. Dig., § 5513; 125.

### **27-66-505. Prohibition on use of heavily loaded vehicles during emergencies.**

(a) The county court of each county acting through the county judge is given the authority in times of emergency caused by unusually heavy or long-continued rainfalls or by freezes, thaws, snows, and other unusual conditions caused by the elements to prohibit vehicles having a net load of more than three thousand five hundred pounds (3,500 lbs) from operating on or over the county highways whereon such conditions exist until the time that the county judge shall determine that the emergency has passed.

(b) Whenever, in the judgment of the county judge, an emergency arises in his or her county, as described in subsection (a) of this section, he or she shall cause notice to be posted in the county courthouse to the effect that until further notice the operation of vehicles having a net load of more than three thousand five hundred pounds (3,500 lbs) over the highways described in the notice is prohibited. Notice shall also be posted in at least ten (10) of the most prominent and public places in the county and be published in a newspaper in the county if practicable. Notice may also be given by mail, telephone, or personal contact to persons operating vehicles, and notice by mail, telephone, or personal contact shall be sufficient notice for the purposes of this section.

(c) If any person, after having knowledge that the operation of vehicles over the county highways or any designated part thereof having a net load of more than three thousand five hundred pounds (3,500 lbs) has been prohibited by the county judge during an emergency as described in this section, violates this section by using the roads contrary to the order of the county judge, the person shall be guilty of a misdemeanor. Upon conviction, he or she shall be fined in any sum not less than twenty-five dollars (\$25.00) nor more than two hundred dollars (\$200).

**History.** Acts 1949, No. 172, §§ 1-3; A.S.A. 1947, §§ 76-126 — 76-128.

### **27-66-506. [Repealed.]**

**Publisher's Notes.** This section, concerning protection of bridges and culverts and penalty for violation, was repealed by Acts 2007, No. 453, § 2. The section was

derived from Acts 1909, No. 178, §§ 1, 2, p. 549; C. & M. Dig., §§ 5506, 5507; Pope's Dig., §§ 7148, 7149; A.S.A. 1947, §§ 76-118, 76-119.

**27-66-507. Bond for driving heavy oil and gas equipment.**

(a) If, prior to exploration and drilling for oil and gas, it appears that an oil and gas company or an individual who is to explore and drill will be driving heavy equipment on county roads or municipal streets, then the company or individual shall file a reasonable bond with the county or with the municipality, as the case may be, to cover anticipated damages to the county roads or municipal streets.

(b) The bond shall be in an amount determined by the county road foreman and supervisor or by the municipal street department or appropriate municipal street official to be sufficient to repair damage caused to the roads or streets by operating the equipment on them.

**History.** Acts 1985, No. 608, § 1; A.S.A. 1947, § 76-146; Acts 1987, No. 44, § 1.

**SUBCHAPTER 6 — EMPLOYMENT OF CONVICTS**

SECTION.

27-66-601. State convicts working on roads.

27-66-602. County convicts working on roads.

SECTION.

27-66-603. Convicts preparing road materials.

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**Effective Dates.** Acts 1913, No. 302, § 86: effective on passage. Emergency declared. Approved Mar. 31, 1913.

Acts 1917, No. 105, § 17: effective on passage. Emergency declared. Approved Feb. 20, 1917.

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**27-66-601. State convicts working on roads.**

(a) The State Highway Commission shall employ and work as many of the state convicts on the public roads as may not be otherwise employed by the Department of Correction.

(b) State convicts working on roads shall be under the care and custody of wardens or other officers named by the Department of Correction, with the approval of the Governor.

(c) The commission shall determine the work to be done by such convicts, the time, place, and manner of the work, and the number of convicts to work. The work shall be under the direct supervision of the Arkansas State Highway and Transportation Department. The department shall determine the number of convicts needed and shall prescribe the rules and regulations under which they shall work.

(d) The pay of the wardens or other officers and the cost of maintenance, including clothing, food, and housing for the state convicts while working on roads shall be paid out of the State Highway and Transportation Department Fund.

(e) The Department of Correction is to receive no profits for working the convicts on state roads.



(f) The pay of the wardens or other officers and the cost of clothing state convicts while on the public roads shall be borne by the state.

(g) The cost of feeding and housing such convicts shall be borne by the county or improvement district where they may be worked.

**History.** Acts 1913, No. 302, § 78; 1917, No. 105, § 10; C. & M. Dig., §§ 5213, 5218; Pope's Dig., §§ 6928, 6933; A.S.A. 1947, §§ 76-523, 76-528; Acts 1995, No. 1296, § 97.

**Cross References.** Contracts for inmate labor, § 12-30-405.

### **27-66-602. County convicts working on roads.**

(a)(1) It shall be lawful to provide in any highway charter for working the male county convicts of any county on the public roads and highways of that county.

(2) But if the county convicts are to be worked in any district which is not coextensive with the county from which they came, then the working of convicts shall have to be approved by the county court having jurisdiction thereof, which approval shall rest in the sound discretion of the court, irrespective of any vote or endorsement by the electors of the district.

(b) Every charter providing for working county convicts shall provide for the appointment of proper overseers, guards, physicians, and other officers and employees necessary and convenient for the control and well-being of the convicts. The overseers, guards, and other officers herein provided for the working of county convicts shall have the same powers and duties with reference to the convicts as sheriffs, jailers, or other peace officers have under similar circumstances.

(c) The expense of feeding, clothing, housing, and superintending county convicts shall be charged to the particular improvement district or county where they are worked according to the time they may be used in such district or county.

(1) Each county shall be credited or paid the amount of costs incurred in the trial of every convict, and the convict shall receive the same credit per day on costs and fine or penalty as is now provided by law.

(2) If county convicts are to be worked in any special improvement district, each county furnishing convicts may receive a flat compensation for their labor of not less than seventy-five cents (75¢) per day.

(3) All payments and settlements provided in this section shall be made in cash.

**History.** Acts 1913, No. 302, §§ 79-81; §§ 6929-6931; A.S.A. 1947, §§ 76-524 — C. & M. Dig., §§ 5214-5216; Pope's Dig., 76-526.

### **27-66-603. Convicts preparing road materials.**

Whenever practical, the State Highway Commission may engage such number of state or county convicts as may be available in preparing road materials at quarries or elsewhere, and the expenses of

the work shall be charged to the state or the county or district receiving these materials.

**History.** Acts 1913, No. 302, § 82; C. & M. Dig., § 5217; Pope's Dig., § 6932; A.S.A. 1947, § 76-527.

## CHAPTER 67

### STATE HIGHWAY SYSTEM

#### SUBCHAPTER.

1. GENERAL PROVISIONS.
2. HIGHWAY DESIGNATION, CONSTRUCTION, AND MAINTENANCE.
3. ACQUISITION, CONDEMNATION, AND DISPOSITION OF PROPERTY.

**A.C.R.C. Notes.** References to "this chapter" in subchapters 1-3 may not apply to § 27-67-220 which was enacted subsequently.

#### RESEARCH REFERENCES

**Am. Jur.** 39 Am. Jur. 2d, Highways, § 22 et seq.      **C.J.S.** 39A C.J.S., Highways, § 2 et seq.

#### SUBCHAPTER 1 — GENERAL PROVISIONS

##### SECTION.

27-67-101. Policy.  
27-67-102. Jurisdiction of county court.

##### SECTION.

27-67-103. Penalties.

**Cross References.** Sabotage Prevention Act, closing and restricting use of highway under, § 5-51-307.

**Effective Dates.** Acts 1913, No. 302, § 86: effective on passage. Emergency declared. Approved Mar. 31, 1913.

Acts 1929, No. 65, § 75: approved Feb. 28, 1929. Emergency clause provided: "It is ascertained and hereby declared that the defective condition of the public roads is a standing menace to the traveling public; that the repairs of the present public roads, and the construction of the roads contemplated by this act, are necessary for the safety of the traveling public, so that the immediate operation of the act is essential for the protection of the public safety, and an emergency is therefore declared; and this act shall take effect and be in force from and after its passage."

Acts 1941, No. 6, § 2: Jan. 30, 1941. Emergency clause provided: "It is hereby ascertained and declared to be a fact that those portions of the State Highways extending into and through cities of 2,500 inhabitants and over population are not at present included in the State Highway System; that said portions are in many instances in poor repair and constitute a menace to traffic; that the municipalities are financially unable to provide the material, labor and equipment for repairing and maintaining the same, and that as a result of the poor condition of said portions, accidents resulting in damage to persons and property have resulted. Therefore, an emergency is declared to exist, and this act being necessary for the immediate preservation of the public peace, health and safety shall take effect

and be in force from and after its passage and approval.”

## 27-67-101. Policy.

It is declared to be the policy of the state to take over, construct, repair, maintain, and control all the public roads in this state comprising state highways as defined in this chapter.

**History.** Acts 1929, No. 65, § 3; Pope's Dig., § 6523; Acts 1941, No. 6, § 1; A.S.A. 1947, § 76-501.

### CASE NOTES

#### Bridge Improvement Districts.

Fact that State Highway Commission was to repair bridge did not entitle state to funds in hands of bridge commissioners arising from betterment assessments. Arkansas State Hwy. Comm'n v. Sebastian Bridge Dist., 205 Ark. 325, 168 S.W.2d 841 (1943).

State was entitled to balance in bridge

improvement district commissioner's hands which arose from rentals paid by utilities corporations after maintenance was assumed by state. Arkansas State Hwy. Comm'n v. Sebastian Bridge Dist., 205 Ark. 325, 168 S.W.2d 841 (1943).

**Cited:** Hinchey v. Thomasson, 292 Ark. 1, 727 S.W.2d 836 (1987).

## 27-67-102. Jurisdiction of county court.

This act shall not be construed as divesting the county court of any of its original jurisdiction over the roads granted by the Constitution, but the object of this act is to give aid and assistance in the maintenance and improvement of those parts of the public roads of the state laid out as such, so important to the people of the state that they have been designated as state highways. If any action required to be done under this act would interfere with the jurisdiction of the county court over roads conferred by the Constitution, it shall be implied that it may be done on order of the county court or proper orders of superior courts on appeal.

**History.** Acts 1929, No. 65, § 58; Pope's Dig., § 6908; A.S.A. 1947, § 76-514.

**Meaning of "this act".** Acts 1929, No. 65, codified as §§ 26-55-101, 27-14-305, 27-14-601, 27-15-1501 [repealed], 27-64-

104, 27-65-101, 27-65-107, 27-65-110, 27-65-112, 27-65-131 — 27-65-133, 27-67-101, 27-67-102, 27-67-201, 27-67-206 — 27-67-208, 27-67-211, 27-67-214, 27-67-218.

### CASE NOTES

#### City Streets.

A county court had authority to provide a suitable right-of-way by changing and widening street designated as state high-

way in city of the second class. Wilson v. Interstate Constr. Co., 178 Ark. 482, 10 S.W.2d 908 (1928) (decision under prior law).



**27-67-103. Penalties.**

Any person who shall knowingly or willfully neglect or refuse to perform any duty either to do or to desist from doing anything which may be required by law relating to roads, highways, or other public improvements in this state shall be deemed guilty of a misdemeanor and upon conviction shall be punished by fine of not over five hundred dollars (\$500) and by imprisonment for not over six (6) months.

**History.** Acts 1913, No. 302, § 84, p. 1179; C. & M. Dig., § 5219; Pope's Dig., § 6934; A.S.A. 1947, § 76-529.

## SUBCHAPTER 2 — HIGHWAY DESIGNATION, CONSTRUCTION, AND MAINTENANCE

## SECTION.

- 27-67-201. Designation generally.
- 27-67-202. Truck route designations.
- 27-67-203. Scenic highway designations.
- 27-67-204. Designation of roads in and connected to state parks.
- 27-67-205. Designation of roads to municipal airports.
- 27-67-206. New construction generally.
- 27-67-207. Maintenance generally.
- 27-67-208. Purchase of materials — Bids.
- 27-67-209. Priority of native resources used in construction and maintenance.
- 27-67-210. Sales and severance tax exemption — Sand and gravel.
- 27-67-211. Highway closure during construction.
- 27-67-212. Changing or widening roads — Role of county court.
- 27-67-213. White stripes on road edges.

## SECTION.

- 27-67-214. Construction and maintenance of railroad crossings.
- 27-67-215. Maintenance of detour roads.
- 27-67-216. Repair of county roads damaged in construction or maintenance of state highway.
- 27-67-217. Direction signs to institutions of higher education.
- 27-67-218. Digging up highways without authorization.
- 27-67-219. John Paul Hammerschmidt Highway.
- 27-67-220. The Highway of Hope.
- 27-67-221. Authority of Highway Department to inform amateur radio operators of high frequency radio repeaters.
- 27-67-222. State police officer highway dedication program.
- 27-67-223. Rock 'n' Roll Highway 67.

**Cross References.** Contracts for construction on state-aid roads, § 27-72-310.

Growing pines on state highway rights-of-way, § 22-5-101.

Procedure for purchase of materials, supplies, and equipment, § 27-65-111.

Traffic control devices, § 27-52-101 et seq.

**Preambles.** Acts 1927, No. 103 contained a preamble which read: "Whereas, the State of Arkansas is embarking upon a new era of permanent road construction, which will require large quantities of road materials such as sand, gravel, crushed

stone, cement, etc. and

"Whereas, these and other materials used in the construction of roads are found or can be manufactured in abundant quantities in the State of Arkansas, and the use of such materials found or manufactured in this State would be of great benefit in the development of the State, in the employment of home people, and in providing an adequate and dependable supply of material for road construction; "Now, therefore..."

Acts 1939, No. 359 contained a preamble which read: "Whereas, the State

Highway Department does do necessary maintenance work on detours, where such detours would become impassable without such maintenance; and

"Whereas, there are roads surfaced with gravel, crushed rock, and other material, which are not on the state highway system and receive no maintenance by the Highway Department, when traffic from a state highway is diverted over said road due to an emergency; and

"Whereas, it is only fair for the state to replace any wear to the surface of such a road to the extent of the wear by such diverted traffic, when a surfaced road is frequently used in order to route traffic around a flooded section of a state highway that is deeply submerged by the temporary overflow of some creek or stream, making travel impossible on a state highway;

"Now, therefore...."

**Effective Dates.** Acts 1927, No. 103, § 2: approved Mar. 4, 1927. Emergency clause provided: "It is ascertained and hereby declared that the purpose of this act is to provide for the encouragement of the production in Arkansas of road materials to be used in the construction and repairing of the highways of the State under the provisions of Act No. 11, of 1927, and that said act is now effective, and that the production of these materials for the construction and maintenance of the roads of the State contemplated by said Act is necessary and essential for the public safety and welfare; that an emergency is therefore declared and this Act shall take effect and be in force from and after its passage."

Acts 1929, No. 65, § 75: approved Feb. 28, 1929. Emergency clause provided: "It is ascertained and hereby declared that the defective condition of the public roads is a standing menace to the traveling public; that the repairs of the present public roads, and the construction of the roads contemplated by this act, are necessary for the safety of the traveling public, so that the immediate operation of the act is essential for the protection of the public safety, and an emergency is therefore declared; and this act shall take effect and be in force from and after its passage."

Acts 1937, No. 109, § 4: Feb. 17, 1937. Emergency clause provided: "That because of the present condition of roads connecting State highways with State

parks, tourists and residents of the State of Arkansas are not visiting State parks in the numbers and as frequently as they would if said roads were properly maintained. Use of said roads would materially increase the revenue to the State highway fund, and said fund is in need of additional revenues to avoid default on obligations for which said fund is liable. This condition constitutes an emergency, and the same being necessary for the immediate preservation of the public peace, health, and safety, this act shall become effective and be in full force from and after its passage and approval."

Acts 1941, No. 6, § 2: Jan. 30, 1941. Emergency clause provided: "It is hereby ascertained and declared to be a fact that those portions of the State Highways extending into and through cities of 2,500 inhabitants and over population are not at present included in the State Highway System; that said portions are in many instances in poor repair and constitute a menace to traffic; that the municipalities are financially unable to provide the material, labor and equipment for repairing and maintaining the same, and that as a result of the poor condition of said portions, accidents resulting in damage to persons and property have resulted. Therefore, an emergency is declared to exist, and this act being necessary for the immediate preservation of the public peace, health and safety shall take effect and be in force from and after its passage and approval."

Acts 1947, No. 222, § 1 (in part): Mar. 18, 1947. Emergency clause provided: "Due to the fact that it will be possible to construct such flashing light signals or other types of railroad highway grade crossing protective devices more economically, and it being necessary for the public peace, health and safety, an emergency is hereby declared to exist and this act shall take effect and be in full force immediately upon its passage and approval."

Acts 1953, No. 323, § 2: Mar. 27, 1953. Emergency clause provided: "Traffic conditions in cities and towns and on state highways have developed that endanger the public peace, health and safety and this act being necessary for the alleviation of such conditions, an emergency is hereby declared to exist and this act shall become effective upon its approval."



Acts 1953, No. 345, § 3: Mar. 28, 1953. Emergency clause provided: "It is hereby determined by the General Assembly that confusion exists as to whether the State Highway Department as the producer under section 84-2101(f) of Arkansas Statutes (1947) is liable for the tax on sand and gravel severed by the State Highway Department under an agreement with the land owner to pay a certain royalty per yard or per ton of sand and gravel so severed and used on the public highways, and that the passage of this act is necessary to remove such confusion. Therefore an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1957, No. 387, § 3: Mar. 27, 1957. Emergency clause provided: "It has been found and is declared by the General Assembly of the State of Arkansas that the roads and highways within the geological boundaries of State parks and the roads and highways connecting the parks to established State highways are in very poor condition and in need of immediate repairs; that tourists and residents are not visiting State parks in the numbers and as frequently as they would if the roads were properly maintained; and that the enactment of this bill will alleviate the situation. Therefore, an emergency is declared to exist and this Act, being necessary for the preservation of the public peace, health and safety, shall take effect and be in force from the date of its approval."

Acts 1961, No. 83, § 3: Feb. 13, 1961. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that much confusion exists in the interpretation of Act 109 of 1937 as amended by Act 387 of 1957, and that the roads and highways leading to and within the boundaries of newly created state parks are in very poor condition and in need of immediate repairs; that the tourists and residents are not visiting these state parks in the numbers and as frequently as they would if the roads were properly maintained; and that the enactment of this bill will alleviate this situation. Therefore, an emergency is hereby declared to exist and this Act being neces-

sary for the preservation of the public peace, health and safety, shall be in full force and effect from and after the date of its passage and approval."

Acts 1963, No. 127, § 3: Feb. 28, 1963. Emergency clause provided: "It is hereby found and determined by the General Assembly that in connection with many state highway construction projects county roads are often utilized in connection with such construction work and that occasionally serious damage to such county road results in connection with such projects; that the State Highway Department owes an obligation to the county to restore any such damaged county road to its former condition of repair; that the State Highway Department does not presently have authority to make such repairs; and, the immediate passage of this act is necessary in order to authorize such repairs and to prevent undue cost to counties in connection therewith. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1965, No. 387, § 5: Mar. 19, 1965. Emergency clause provided: "It is hereby found and determined by the General Assembly that the provisions of law relative to notice to landowners in instances where condemnations of private property for highway purposes is affected in the County Court are unclear, and that such want of clarity has resulted in confusion of land titles and unnecessary litigation arising from such condemnations, and that the immediate passage of this Act is necessary in order to correct said situation. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1969, No. 99, § 4: Feb. 24, 1969. Emergency clause provided: "It is hereby found and determined by the General Assembly that a white stripe of not less than four (4) inches in width along the edges of a State highway reduces the number of traffic accidents; that any method which insures safer driving conditions and reduces the possibility of accidents should be utilized to reduce the death rates on



the highways of this State; and that in order to accomplish these purposes, it is necessary that this Act become effective immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall become effective from and after its passage and approval."

Acts 1979, No. 584, § 3: Mar. 27, 1979. Emergency clause provided: "It is hereby found by the General Assembly that the immediate passage of this Act is necessary because the location of the institutions of higher education is of importance to not only the people of the State of Arkansas but also to other travelers of the highways in Arkansas; that many important local, regional and state events and activities are occurring at these institutions which the people have a vital interest in and in which their attendance is necessary, and that the immediate passage of this Act is necessary to accomplish this purpose. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1983, No. 181, § 3: Feb. 15, 1983. Emergency clause provided: "It is hereby found and determined by the General Assembly that the segment of State Highway 309 from Havana, Arkansas to Paris, Arkansas, across Mt. Magazine is one of the most scenic highways in the State of Arkansas; that the designation of scenic highways in the beautiful mountainous areas of the State not only serves as an invitation to tourists to visit those areas but instills a sense of pride in local citizens in the area and gives them incentive to maintain the highway rights-of-way and those areas visible from the highways in an attractive state; that the 1983 tourist season will begin in the near future and it is urgent that this Act be given effect immediately in order that appropriate signs may be placed along this portion of the highway and in order that such segment of Highway 309 can be desig-

nated a scenic highway on official State highway maps as soon as possible. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1985, No. 803, § 3: Apr. 3, 1985. Emergency clause provided: "It is hereby found by the General Assembly that the immediate passage of this Act is necessary because the location of the institutions of higher education and postsecondary vocational and technical schools is of importance to not only the people of the State of Arkansas but also to other travelers of the highways in Arkansas; that many important local, regional and State events and activities are occurring at these institutions which the people have a vital interest in and in which their attendance is necessary, and that the immediate passage of this Act is necessary to accomplish this purpose. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1989 (3rd Ex. Sess.), No. 21, § 4: Nov. 6, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly that that Highway 12 East of Rogers has appeared on former official state highway maps prepared and distributed by the State Highway and Transportation Department as a scenic highway; that the department has placed appropriate highway identifying signs on Highway 12 East of Rogers designating it a scenic highway; that the newest official state highway map fails to designate Highway 12 East of Rogers as scenic; that such an oversight has resulted in loss of tourism in the area; that it is in the best interests of the citizens of this State that this error be corrected as soon as possible. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

## 27-67-201. Designation generally.

(a) State highways are declared to be those primary roads and secondary roads and connecting roads heretofore designated by the State Highway Commission, as shown by a map on file in the office of the commission, entitled "Map of the State of Arkansas Showing State Highway System", and marked "Revised March 1, 1929", including those portions of roads extending into or through incorporated towns and cities. The commission is required to preserve the map as a permanent record.

(b) The commission is empowered, with any necessary consent of the proper federal authorities, to make, from time to time, necessary changes and additions to the roads designated as state highways that it may deem proper, and changes or additions shall become effective immediately upon the filing of a new map as a permanent and official record in the office of the commission. However, the commission shall not have authority to eliminate any part of the highway system.

**History.** Acts 1929, No. 65, § 3; Pope's Dig., § 6523; Acts 1941, No. 6, § 1; A.S.A. 1947, § 76-501.

**Publisher's Notes.** The case of *Hinchey v. Thomasson*, 292 Ark. 1, 727 S.W.2d 836 (1987), states that the language in the last sentence of subsection

(b) of this section providing that the commission shall not have authority to eliminate any part of the highway system was repealed by implication, to the extent of the conflicting provisions, with the passage of § 27-65-109.

## CASE NOTES

### ANALYSIS

In General.  
Elimination.  
Exchange.  
Relocation.  
Variations.

### In General.

Although the provisions of this section that the commission shall not have authority to eliminate any part of the highway system have been repealed by implication to the extent they conflict with § 27-65-109, the remainder of this section is unaffected, and accordingly remains in force. *Hinchey v. Thomasson*, 292 Ark. 1, 727 S.W.2d 836 (1987).

### Elimination.

The provisions in this section that the commissioners shall not have authority to eliminate any part of the highway system were repealed by implication to the extent they conflicted with § 27-65-109, which authorizes the commissioners to exchange lands with county highway systems.

*Hinchey v. Thomasson*, 292 Ark. 1, 727 S.W.2d 836 (1987).

### Exchange.

State highway and transportation department commissioners may exchange state highway system roads for county roads. *Hinchey v. Thomasson*, 292 Ark. 1, 727 S.W.2d 836 (1987).

### Relocation.

Relocation of 12-mile stretch of state highway was not invalid on the ground that it eliminated a unit in the highway system. *Woollard v. State Hwy. Comm'n*, 220 Ark. 731, 249 S.W.2d 564 (1952).

### Variations.

A variation of eight or 10 miles from the original route of a state highway as shown in the map referred to in Acts 1923 (1st Ex. Sess.), No. 5, § 3, was a material variation. *Bonds v. Wilson*, 171 Ark. 328, 284 S.W. 24 (1926) (decision under prior law).

State Highway Commission was authorized to depart materially from original route of a highway between towns desig-



nated on map referred to in Acts 1923 (1st Ex. Sess.), No. 5, so long as towns designated on the map were not eliminated from the route so changed. Bonds v. Wilson, 171 Ark. 328, 284 S.W. 24 (1926) (decision under prior law).

### **27-67-202. Truck route designations.**

(a) The State Highway Commission is authorized to designate and establish truck routes through cities and towns, which routes shall be properly marked by the commission.

(b) Any truck route so established shall become a part of the state highway system, and the Arkansas State Highway and Transportation Department shall construct, repair, and maintain the truck route.

**History.** Acts 1953, No. 323, § 1; A.S.A. 1947, § 76-549.

### **CASE NOTES**

**Authority.**

The General Assembly had the power to enact this section. Arkansas State Hwy.

Comm'n v. City of Little Rock, 227 Ark. 660, 300 S.W.2d 929 (1957).

### **27-67-203. Scenic highway designations.**

(a) The following highways and designated parts of highways within the State of Arkansas are designated as scenic highways:

- (1) U.S. 65 from the Louisiana line to the Missouri line;
- (2) U.S. 71 from the Louisiana line to the Missouri line;
- (3) U.S. 82 from the Mississippi River to Texarkana;
- (4) U.S. 270 from U.S. 71 to Hot Springs;
- (5) I-30 from Little Rock to U.S. 70 west of Benton, and U.S. 70 to Hot Springs;
- (6) I-40 from Little Rock to the Oklahoma line west of Fort Smith;
- (7) U.S. 63 from I-55 at Turrell to Mammoth Spring;
- (8) U.S. 62 from the Missouri line to the Oklahoma line;
- (9) State 7 from the Louisiana line to Bull Shoals Lake north of Harrison;
- (10) The Great River Road: Highway 82 from the Mississippi line west to Highway 65; Highway 65 north from the Louisiana line to Dumas; Highway 4 from McGehee east through Arkansas City to Highway 1; Highway 1 from its intersection with Highway 4 through Watson to Highway 165 at Back Gate; Highway 165 north from Dumas to Dewitt; Highway 1 north to Highway 316; Highway 316 east to Highway 318; Highway 318 south to Highway 20; Highway 20 east to Elaine; Highway 44 north through Helena-West Helena; Phillips County Routes 239 and 217 and Lee County Route 221 through the St. Francis National Forest; Highway 44 to Marianna; Highway 79 north to Highway 38; Highway 38 east to Highway 147; Highway 147 north to Highway 70; Highway 70 and I-55 through West Memphis to the Tennessee line; Highway 77 from Highway 70 in West Memphis north



to Highway 61; and Highway 61 through Blytheville to the Missouri line;

(11) State 32 and State 355 from Ashdown to Mineral Springs;

(12) State 27 to Kirby; U.S. 70 and State 8 to Norman; State 27 to Dardanelle; and State 27 from Dover to Harriet;

(13) State 9 from Crows to Jct. U.S. 65; State 16 from U.S. 65 to Shirley; and State 9 from Shirley to Mammoth Spring;

(14) State 28 from U.S. 71 to Ola;

(15) State 154 from Oppelo to State 27;

(16) State 23 from U.S. 71 to the Missouri line;

(17) State 309 from State 10 to State 23 at Ozark;

(18) State 21 from Clarksville to the Missouri line;

(19) State 16 from Searcy to Siloam Springs, including the connecting segment of State 25 at Heber Springs;

(20) State 14 from U.S. 63 to Table Rock Lake;

(21) State 68 from Alpena to Siloam Springs;

(22) State 5 from U.S. 67 to the Missouri line;

(23) State 25 from its intersection with U.S. 65 to Heber Springs; State 25 from Heber Springs to Batesville; U.S. 167 from Batesville to Ash Flat; State 286 from its intersection with I-40 to its intersection with State 60; State 60 from its intersection with State 286 to Perryville; and State 10 from its intersection with State 9 to I-430;

(24) State 58 from Sage through Guion, and State 69 to Melbourne;

(25) State 178 from Flippin to Mountain Home;

(26) State 88 from the Oklahoma line to Mena;

(27) State 59 from Van Buren to Jct. State 220;

(28) State 220 from Jct. 59 to State 74 at Devil's Den State Park;

(29) State 170 from Devil's Den State Park to U.S. 71 at West Fork;

(30) I-40 from the Tennessee line to Little Rock;

(31) I-30 from Benton south to the Clark County line;

(32) State 10 from Ola to Greenwood;

(33) State 22 from Dardanelle to Paris;

(34) State 12 from Rogers to Jct. State 23;

(35) State 141 from Jonesboro to McDougal;

(36) State 125 from its intersection with State 14 north of Yellville to the Missouri line;

(37) U.S. 49 from its intersection at Brinkley to the Mississippi state line, which will be known as the "Delta Parkway, an Arkansas Scenic Highway";

(38) State 5 from Benton to Hot Springs;

(39) U.S. 64 from its intersection with I-40 in Johnson County westward to the western corporate limits of the city of Ozark;

(40) State 186 from its intersection with I-40 in Franklin County south to its intersection with U.S. 64 at Altus;

(41) U.S. 70 from its intersection with I-440 in Pulaski County eastward to its intersection with U.S. 49 at Brinkley;

(42) U.S. 165 from its intersection with I-440 in Pulaski County eastward to Dumas;

(43) State 220 from State 59 to the Oklahoma border;

(44) That portion of State Highway 166 beginning at its intersection with U.S. 62 in Randolph County and extending south to the county line; State 361 beginning at the Spring River Bridge in Lawrence County and ending at its intersection with State 25 in Black Rock; and State 25 beginning at its intersection with State 361 in Black Rock and ending at the entrance to the Lake Charles State Park;

(45) U.S. 62 from St. Francis in Clay County, then south and west through Piggott to the intersection of West Cherry Street, then west on West Cherry Street to 12th Street, then north on 12th Street to its intersection with U.S. 62 West; then west on U.S. 62 to McDougal intersecting with State 141; then south on State 141 through Boydsville and Knob to Hooker where it intersects with State 135; then south along State 135 through Lafe to its intersection with U.S. 49; then south along U.S. 49 to Court Street in Paragould, then east on Court Street to Pruett Street, south on Pruett Street to Main Street, west on Main Street to 7th Street, south on 7th Street to U.S. Highway 412; then west along U.S. 412 to its intersection with State 168; then south on State 168 to an intersection with State 141 at Walcott; then south along State 141 to County Road 766, KAIT Road; then east on County Road 766 to State 351; then south on State 351 to U.S. 49 and U.S. 1 in Jonesboro; then south on U.S. 49 and U.S. 1 to Aggie Road, west to Robinson Street, south to Marshall Street, west to Caraway Road, then south on Caraway Road to Matthews Avenue, then west on Matthews Avenue to U.S. 49B, north to Cate Avenue, west to U.S. 49B, Union Avenue, and south to Campus Street; picking up at the intersection of State 1B South and State 18 East, then south on State 1B to an intersection with Windover Road; picking up at the intersection of State 1B South and Lakewood Drive; then south along State 1B to Craighead Forest Road; west on Craighead Forest Road to State Highway 141, Culberhouse Road; south on State Highway 141 to Lawson Road; east on Lawson Road across State Highway 1, continuing east to join State Highway 163; then south on State 163 to South Street in Harrisburg, then southwest on South Street to Center Street, west on Center to the Courthouse Square, south on East Street to Court Street to North Main Street, North Main Street to East Jackson Street, State 14; then east on State 14 to State 163 South through Birdeye to an intersection with U.S. 64 at Levesque; then west along U.S. 64 and U.S. 64B; State Highway 284, Hamilton Avenue, into Wynne to Terry Street, south on Terry Street to Commercial Avenue, west on Commercial Avenue to Front Street, south on Front Street to Merriman Avenue, east on Merriman Avenue to U.S. 1, Falls Boulevard, south on U.S. 1 to Martin Drive, County Road 734, east on County Road 734 to State 284 South; then south on State 284 to Forrest Street in Forrest City, south on Forrest Street to East Broadway, west to Izard Street, south to East Front Street, west on East Front Street and intersecting with State 1; then south on State 1 to an intersection with U.S. 79; then east on U.S. 79 through Marianna to Poplar Street, then south on Poplar Street to



an intersection with State 44; then south on State 44 through the St. Francis National Forest intersecting with State 242; then south along State 242 to U.S. 49B; then east on U.S. 49B, becoming Perry and Porter Streets, to Cherry Street in Helena-West Helena, south on Cherry Street to Missouri Street, west on Missouri Street to Biscoe, at U.S. 49B; and then south on U.S. 49B to the Arkansas-Mississippi Bridge, which will be known as "Crowley's Ridge Scenic Highway", an Arkansas Scenic Highway;

(46) State 540 from I-40 northward to Mountainburg in Crawford County and that portion of the route being constructed on a new location to its intersection with the U.S. 71 Fayetteville Bypass in Washington County;

(47) I-530 from State 256 to U.S. 65 South;

(48) Beginning at the intersection of State 96 and U.S. 71 west of Mansfield in Sebastian County; then along State 96 westward until reaching the eastern corporate limits of Hartford in Sebastian County, which will be known as the "Poteau Mountain Scenic Highway", an Arkansas Scenic Highway; and

(49) State 10 from the western corporate limits of Greenwood in Sebastian County, then westward along State 10 until reaching the Oklahoma state boundary, which will be known as the "Sugarloaf Mountain Scenic Highway", an Arkansas Scenic Highway.

(b)(1) It shall be the responsibility of the Arkansas State Highway and Transportation Department to place appropriate highway identifying signs on those highways herein that are state highways.

(2) It shall be the obligation of the respective counties to place appropriate signs on county roads on their respective county road systems.

(3) The department shall identify all highways designated herein as scenic highways on any official state highway maps prepared and distributed by the department.

(c) The department shall erect appropriate signs along the route of those highways or sections of highways designated herein, indicating that these highways or parts of highways have been designated as scenic highways.

**History.** Acts 1975, No. 462, §§ 1, 2; 1981, No. 676, § 1; 1983, No. 181, § 1; 1985, No. 20, § 1; A.S.A. 1947, §§ 76-560, 76-561; Acts 1989 (3rd Ex. Sess.), No. 21, § 1; 1991, No. 202, § 1; 1991, No. 226, § 1; 1991, No. 679, § 1; 1991, No. 734, § 1; 1993, No. 449, § 1; 1993, No. 464, § 1; 1993, No. 723, § 1; 1995, No. 833, § 1; 1997, No. 180, § 1; 1997, No. 382, § 1; 1997, No. 1268, § 1; 1999, No. 302, § 1; 1999, No. 392, § 1; 2001, No. 92, § 1; 2001, No. 1061, § 1; 2003, No. 130, § 1; 2009, No. 495, § 1.

**A.C.R.C. Notes.** Identical Acts 1993, Nos. 428 and 1211, § 1, purported to

amend this section by adding a new (a)(39) which designated U.S. Highway 65 from the Arkansas-Louisiana border north to Pine Bluff, Arkansas as a scenic highway. This provision, duplicative of (a)(1), has not been codified.

**Amendments.** The 2009 amendment substituted "Craighead Forest Road; west on Craighead Forest Road to State Highway 141, Culberhouse Road; south on State Highway 141 to Lawson Road; east on Lawson Road across State Highway 1, continuing east to join State Highway 163" for "an intersection with State 163" in (a)(45).



**27-67-204. Designation of roads in and connected to state parks.**

(a) The State Highway Commission shall include as a part of the state highway system the most used vehicular roads located within the geographical boundaries of all existing state parks and the most used roads and highways connecting established state highways with state parks. When any new state park is created or established, the commission shall immediately include as a part of the state highway system the vehicular road within the boundaries of the new state park and the roads and highways connecting the new state park to established state highways.

(b) The provisions of this section shall be applicable to all state parks which are now or may hereafter be placed under the control and direction of the Department of Parks and Tourism.

(c) It shall be the duty of the commission to provide for maintenance and repairs of these roads as provided for other state highways.

(d)(1) The Arkansas State Highway and Transportation Department is authorized to construct and maintain public parking areas and parking facilities at the respective state parks.

(2) For the purposes of this subsection, parking areas and facilities constructed by the Arkansas State Highway and Transportation Department at the respective state parks shall be deemed to be a part of the state highway system.

(3) The Department of Parks and Tourism shall study the needs for public parking areas and parking facilities at the respective state parks and shall notify the Arkansas State Highway and Transportation Department thereof.

(4) The Arkansas State Highway and Transportation Department may cooperate with the Department of Parks and Tourism in the construction and maintenance of such facilities.

**History.** Acts 1937, No. 109, §§ 1-3; No. 152, §§ 1, 2; A.S.A. 1947, §§ 76-502, Pope's Dig., §§ 6524-6526; Acts 1957, No. 76-503, 76-503.1, 76-503.2, 76-504. 387, §§ 1, 2; 1961, No. 83, §§ 1, 2; 1963,

**27-67-205. Designation of roads to municipal airports.**

(a) The State Highway Commission may include as a part of the state highway system the principal vehicular road leading to each municipal airport in this state which is located outside the city limits of a municipality and which:

(1) Has one (1) or more hard-surfaced runways at least two thousand feet (2,000') in length;

(2) Provides fueling services for aircraft;

(3) Provides overnight tie-down facilities for aircraft.

(b) The commission shall determine which roads are to be included in the state highway system under the provisions of this section that are not hard-surfaced roads, shall construct hard-surfaced roads to these airports, and shall maintain and repair hard-surfaced roads so constructed or already in existence which lead to municipal airports in this

state located outside the city limits and which are included in the state highway system pursuant to the authority granted in this section.

(c) The provisions of this section apply only to municipal airports in existence on July 19, 1971, and located outside the city limits of the municipality.

**History.** Acts 1971, No. 248, §§ 1-3;  
A.S.A. 1947, §§ 76-557 — 76-559.

### **27-67-206. New construction generally.**

(a) It shall be the duty of the State Highway Commission to construct the roads in the state highway system which are not now constructed and that the work of construction be pushed as rapidly as funds are available for that purpose.

(b) The commission shall begin the work of construction in those counties in which the roads embraced in the state highway system have not been constructed by improvement districts, or in which only a small portion of roads have been so constructed. The commission shall continue construction work in such counties until the completed roads in each county in the state have been brought to a parity, after which construction work shall be distributed throughout the counties so as to maintain the parity as far as practical.

(c) All new construction work shall be done by contract, and all contracts for the work shall be let to the lowest responsible bidder.

(d) The commission shall have the right to reject any or all bids.

(e) No contract in excess of ten thousand dollars (\$10,000) shall be let without advertising for bids. However, the commission may enter into agreements in excess of ten thousand dollars (\$10,000) on a noncompetitive basis in a manner that it deems fit with railway companies for the installation of flashing light signals or other types of railroad highway grade crossing protective devices and work necessary to be performed by the railroads in conjunction with the construction of grade elimination structures on force account or day labor basis when the work incurred is financed with federal funds in whole or in part.

(f) Successful bidders shall be required to furnish a surety bond by a surety company to be approved by the commission, in a penal sum of at least one-fourth ( $\frac{1}{4}$ ) of the amount of the contract price, conditioned as the commission may require.

(g) However, the commission may accept personal bonds, but in every case in which a personal bond is accepted, the contractor shall be required to deposit United States Government bonds, state highway bonds or notes, or valid bonds of any road improvement district referred to in Acts 1929, No. 65, § 19 [repealed], in an amount equal to twenty-five percent (25%) of the amount of the contract to be held in escrow as collateral security for the performance of the contract.

(h) Where the commission is of the unanimous opinion that any particular piece of work may be done more economically with state forces, the commission may proceed to do the particular construction work with state forces.

(i) The commissioner may let contracts for the construction of necessary bridges on the state highways to be paid for out of the State Highway and Transportation Department Fund.

(j)(1) As used in this subsection:

(A) "Design-builder" means a company, firm, partnership, corporation, association, joint venture, or other legal entity, including a combination of any of these entities, that makes a proposal to perform a design-build project contract; and

(B) "State highway revenues" means highway revenues as defined under § 27-70-202.

(2) Notwithstanding any other provisions of law to the contrary, the commission may:

(A) Establish written procedures and regulations for the procuring of qualifications-based, design-build services and for administering design-build project contracts;

(B) Receive solicited and unsolicited proposals for design-build construction projects from a design-builder;

(C) Award a design-build project contract on a qualification basis that offers the greatest value for the state;

(D) Contract with a design-builder to acquire, construct, finance, improve, maintain, and operate an unlimited number of qualified design-build projects, including turnpike projects, when state highway revenues are not required to fund any portion of the projects' costs; and

(E) Contract with design-builders to acquire, construct, finance, improve, maintain, and operate two (2) qualified design-build projects within ten (10) years of July 16, 2003, should state highway revenues be required to fund any portion of the projects' cost.

(3) However, the projects' costs for each of the two (2) individual contracts involving state highway revenues under subdivision (j)(2)(E) must be in excess of fifty million dollars (\$50,000,000) to qualify as design-build projects under this subsection.

**History.** Acts 1929, No. 65, §§ 18, 21; §§ 76-505, 76-507; Acts 2003, No. 460, Pope's Dig., §§ 6527, 6549; Acts 1941, No. § 2.  
341, § 1; 1947, No. 222, § 1; A.S.A. 1947,

## CASE NOTES

### ANALYSIS

In General.  
Contracts.

#### In General.

This section, is unambiguous and mandatory. *Leonard v. State ex rel. Attorney Gen.*, 185 Ark. 998, 50 S.W.2d 598 (1932).

#### Contracts.

One furnishing labor and materials for construction of bridges under a contract

that was invalid merely because not let in the manner and form provided by law was entitled to recover the fair value thereof under a quantum meruit. *Arkansas State Hwy. Comm'n v. Keaton*, 187 Ark. 306, 59 S.W.2d 481 (1933).

Acceptance by the state of an unauthorized contract did not estop state from recovering, by way of setoff, a payment in excess of reasonable costs. *Refunding Bd. v. State Hwy. Audit Comm'n*, 189 Ark. 144, 70 S.W.2d 1027 (1934).



**27-67-207. Maintenance generally.**

(a) As used in this chapter, unless the context otherwise requires, "maintenance" means the constant making of all repairs necessary to preserve a smooth surface on the roads and to keep the bridges and culverts in a safe condition and shall include drainage work, the building of bridges and culverts, and the making of cuts and fills as the commission deems necessary to accomplish these purposes.

(b) It shall be the duty of the State Highway Commission to begin as soon as practicable and continue the maintenance of all roads that are properly designated as state highways, to the end that every part of the state highways shall be properly, fairly, and equitably maintained and kept in repair.

(c) So far as practicable, maintenance and repair shall be according to what is known as the patrol system. Laborers as are deemed necessary may be employed and kept continually on the roads, with the force, equipment, and materials that are necessary to perform the work.

(d) The commission may make all necessary contracts, purchase all necessary equipment, supplies, and materials, and employ all necessary labor and is given all other necessary powers to provide for maintenance and shall pay for the same out of the State Highway and Transportation Department Fund.

(1) However, all contracts so let in excess of one thousand dollars (\$1,000) made by the commission shall be let on a competitive basis to the lowest responsible bidder.

(2) The commission may reject all bids.

(3) All bids shall be sealed bids and shall be filed with the commission in open session and opened and tabulated during that session of the commission.

(4) No such contract shall be valid unless signed by at least three (3) members of the commission and attested to by the secretary.

**History.** Acts 1929, No. 65, § 18; Pope's Dig., § 6527; A.S.A. 1947, § 76-505.

**27-67-208. Purchase of materials — Bids.**

The State Highway Commission may purchase materials in quantities for use on the public works and may let contracts by the terms of which the contractors shall be required to use these materials in carrying out their contracts. However, any material purchased shall be bought only after advertising for bids, which bids are to be received and opened in public.

**History.** Acts 1929, No. 65, § 64; Pope's Dig., § 6914; A.S.A. 1947, § 76-509.

**27-67-209. Priority of native resources used in construction and maintenance.**

(a) It is declared to be the policy of the state to encourage, in every way possible, the development of natural resources of the state, which resources are suitable for use in highway construction.

(b) Whenever upon investigation the commission shall find that suitable materials produced, mined, or manufactured in the State of Arkansas can be obtained as cheaply and are of as good quality as materials produced, mined, or manufactured in other states, the commission is empowered and authorized to specify that the materials produced, mined, or manufactured in Arkansas shall be used in the construction or maintenance of the roads of this state.

**History.** Acts 1927, No. 103, § 1; Pope's Dig., § 6495; A.S.A. 1947, § 76-224.

**27-67-210. Sales and severance tax exemption — Sand and gravel.**

When the Arkansas State Highway and Transportation Department, by lease or by oral or written agreement with the landowner, enters upon the land and severs sand and gravel for the purpose of using the sand and gravel in the repair, maintenance, or construction of state highways, then the department as the producer and the owner of the land shall not be liable for, nor shall they pay to the State of Arkansas, any sales or gross receipts taxes or severance taxes upon the sand and gravel.

**History.** Acts 1953, No. 345, § 1; A.S.A. 1947, § 76-243.

**27-67-211. Highway closure during construction.**

(a) The State Highway Commission shall have full authority to close any state highway to traffic during such time as the commission may deem it necessary while work is being done thereon by the commission under the authority of this chapter or while it is necessary for the protection of the road during a period of overflow. During the time the road is closed, the commission may authorize the placing of suitable barricades and signs at each end of the portion of the road that is closed.

(b) Any person who shall remove the barricades or who shall use or attempt to use any section of a state highway thus closed to traffic shall be deemed guilty of a misdemeanor. Upon conviction, that person shall be fined not less than twenty-five dollars (\$25.00) nor more than one hundred dollars (\$100) and shall be liable to the state for any damage done.

**History.** Acts 1929, No. 65, § 56; Pope's Dig., § 6906; A.S.A. 1947, § 76-513.

## 27-67-212. Changing or widening roads — Role of county court.

(a) The State Highway Commission may call upon the county court to change or widen, in the manner provided by § 14-298-121, any state highway in the county where the state highway engineer deems it necessary for the purpose of constructing, improving, or maintaining the road.

(b) In the event the county court should refuse to widen the road as requested, the commission may refuse to construct, improve, or maintain that portion of the road until a suitable right-of-way is provided.

(c) This section and § 14-298-120 shall be cumulative to all existing laws and parts of laws and shall not be construed as to repeal any existing laws or part of laws unless they are in conflict herewith, and then only to the extent of the conflict.

**History.** Acts 1965, No. 387, §§ 3, 4; A.S.A. 1947, §§ 76-928, 76-928n.

**Cross References.** Alteration of county roads, § 14-298-101 et seq.

### CASE NOTES

#### ANALYSIS

Appeals.

Condemnation.

—Damages.

—Deposit.

County Roads.

Municipal Streets.

#### Appeals.

Where the county court, following a request by the State Highway Commission, condemned land for highway purposes, an appeal by the landowners to the circuit court from an order of the county court allowing their claim for damages against both the county and the commission constituted a suit against the state over which the circuit court had no jurisdiction. *Arkansas State Hwy. Comm'n v. Palmer*, 222 Ark. 603, 261 S.W.2d 772 (1953) (decision under prior law).

#### Condemnation.

A filing of a suit by State Highway Commission to condemn certain land for highway purposes did not amount to a request to the county to commence an action; rather, such an action constituted a lawsuit by the state. *Lee County v. Holden*, 82 F. Supp. 353 (E.D. Ark. 1949) (decision under prior law).

Where the county court failed or refused to grant a request of the State Highway Commission to condemn certain land, the commission could acquire the right-of-way

by purchase, eminent domain, or otherwise, and could, in such event, charge one-half the cost back to the county. *Arkansas State Hwy. Comm'n v. Palmer*, 222 Ark. 603, 261 S.W.2d 772 (1953) (decision under prior law).

While § 14-298-120 gives the county court the power to condemn land on its own motion and upon petition of interested landowners, it does not permit a petition of the highway commission to be acted on by the county court. *Arkansas State Hwy. Comm'n v. Dotson*, 301 Ark. 54, 781 S.W.2d 459 (1989).

Where the record contained no petition to condemn land by the highway commission to the county court, and the recitation by the county court order that there was such a petition was apparently a reference to action by the commission to "call upon" the county to act as permitted in subsection (a) of this section; in such instances, the county was the condemning authority, and the commission was not a party. *Arkansas State Hwy. Comm'n v. Dotson*, 301 Ark. 54, 781 S.W.2d 459 (1989).

#### —Damages.

Where a county court, at the request of the State Highway Commission, condemned land for road purposes, the county became liable for all damages resulting from such taking. *Arkansas State Hwy. Comm'n v. Palmer*, 222 Ark. 603, 261 S.W.2d 772 (1953) (decision under prior law).



**—Deposit.**

Where county court entered order condemning lands for right-of-way at request of State Highway Commission and the commission thereafter obtained order in chancery court enjoining landowner from interfering with its operation in clearing the right-of-way, at which time the chancery court ordered the commission to pay a cash deposit into court to guarantee the payment of damages in the event that the county did not pay the damages, landowner was not entitled to the deposit upon an award of damages where there was no showing that he had made his claim against the county, that the county had refused to pay, or that the county was unable to pay. *Arkansas State Hwy. Comm'n v. Croom*, 225 Ark. 312, 280 S.W.2d 887 (1955) (decision under prior law).

Where county sought condemnation pursuant to former similar statute, landowner was entitled to a guarantee of payment for land taken, and it was error to direct the county to make \$5,000 deposit where there was nothing in the record to

indicate whether that amount was sufficient or adequate to compensate for the damages that might have been incurred, nor anything to denote whether sufficient moneys from county revenues had been retained to pay the damages. *Shipley v. Crawford County*, 253 Ark. 1021, 490 S.W.2d 439 (1973) (decision under prior law).

**County Roads.**

County road held not created. *Arkansas Game & Fish Comm'n v. Lindsey*, 292 Ark. 314, 730 S.W.2d 474 (1987).

**Municipal Streets.**

A county court had authority to provide a suitable right-of-way by changing and widening streets designated as state highways in cities of the second class. *Wilson v. Interstate Constr. Co.*, 178 Ark. 482, 10 S.W.2d 908 (1928) (decision under prior law).

**Cited:** *Greig v. Crawford County*, 256 Ark. 202, 506 S.W.2d 523 (1974); *Dotson v. Madison County*, 311 Ark. 395, 844 S.W.2d 371 (1993).

**27-67-213. White stripes on road edges.**

(a) The Arkansas State Highway and Transportation Department shall paint and maintain white stripes not less than four inches (4") in width on both edges of all hard-surfaced primary and secondary state roads with a twenty foot (20') or more pavement width and carrying one thousand (1,000) or more vehicles daily, which roads are constructed in this state.

(b) The provisions of this section shall not apply to any noncontrolled-access roads in urban areas and any other state highway determined by an engineering study not to warrant such striping.

**History.** Acts 1969, No. 99, §§ 1, 2; A.S.A. 1947, §§ 76-555, 76-556.

**27-67-214. Construction and maintenance of railroad crossings.**

(a) It shall be the duty of the members of the State Highway Commission and of the state highway engineers, on all trips in the state, to particularly observe crossings of railroads on state highways.

(b) It shall be the duty of all railroad companies and the owners of tramroads whose lines intersect or cross any of the highways of the state to improve that part of the roadway between their tracks and to the end of the cross ties on each side with the same material, whatever practicable, with the same foundation and surface as that in the

adjoining portions of the roadway and to maintain such crossings in a good state of repair.

(c) The commission shall have power and authority to require any and all railway companies to build and construct roads under their tracks at such crossings as, in the judgment of the commission, will be for the best and safest interest of the traveling public.

(d) The commission may join with any railroad company in construction or paying not exceeding fifty percent (50%) of the cost of constructing any overhead or undergrade railroad crossing on a state highway or on an extension or continuation of any state highway through a town or city.

**History.** Acts 1929, No. 65, § 59; Pope's Dig., § 6909; A.S.A. 1947, § 76-517.

CASE NOTES

**Duties of Railroads.**

Duty of railroad to improve roadways where they intersect tracks is restricted by this section to area of road between

tracks and to end of cross ties. *Untiedt v. Saint Louis S.W. Ry.*, 246 Ark. 941, 440 S.W.2d 251 (1969).

**27-67-215. Maintenance of detour roads.**

(a)(1) When the Arkansas State Highway and Transportation Department has been forced to bar traffic from a flooded section of a state highway by putting up signs directing the traffic from the state highway or by stationing state highway employees on the state highway to direct traffic from the state highway over a road surfaced with gravel, crushed stone, or other type of surfacing or pavement, and when it appears that the detour road will continue to be needed, the Arkansas State Highway and Transportation Department shall have authority, as it deems right and proper, to do any repair to the surfacing of the road over which traffic is diverted by the department, as may equal, in the judgment of the department, the amount of wear and tear that is caused to the road by the traffic diverted over it.

(2) However, the department shall only do such maintenance work on the surface of the road as in the judgment of the department it feels that it has caused wear to the surface of the road by reason of the traffic diverted over it from time to time.

(b) In order that this maintenance work may be legally done on such surfaced road, the road used for this purpose shall henceforth be a part of the state highway system.

(c) It is distinctly understood that this section shall not force any maintenance of a road on the department but will merely make it legal for the department to do the amount of maintenance on the surfaced road that it feels it has caused to be needed to the surface of the road by traffic diverted over it by action of the department through its employees.

**History.** Acts 1939, No. 359, §§ 1, 2;  
A.S.A. 1947, §§ 76-515, 76-516.

### **27-67-216. Repair of county roads damaged in construction or maintenance of state highway.**

The Arkansas State Highway and Transportation Department is authorized to make any necessary repairs to a county road to restore the road to its former condition of repair in those instances where damages to the county road may have been occasioned by the department in connection with the construction or maintenance of a state highway or by any contractor performing work upon any state highway under contract with the department.

**History.** Acts 1963, No. 127, § 1; A.S.A.  
1947, § 76-551.

### **27-67-217. Direction signs to institutions of higher education.**

The Arkansas State Highway and Transportation Department shall design, erect, and maintain signs at the closest and all other proper exits and intersections of state and federal highways designating exits to any and all institutions of higher education and postsecondary vocational and technical schools, whether public or private, upon the request of the institution.

**History.** Acts 1979, No. 584, § 1; 1985,  
No. 803, § 1; A.S.A. 1947, § 76-564.

### **27-67-218. Digging up highways without authorization.**

(a) It shall be unlawful for any person to dig up any portion of the state highways or to otherwise disturb them for the purpose of laying pipelines, sewers, poles, wires, ditches, railways, or for any other purpose, except as authorized by an order of the State Highway Commission.

(b)(1) All work shall be done in accordance with the rules and regulations that may be prescribed by the commission.

(2) The work shall be done under the supervision of and to the satisfaction of the state highway engineer.

(3) All cost of replacing the highway in as good a condition as it was before being disturbed shall be paid by the person, firm, or corporation to whom or in whose behalf authority is given.

(c)(1) Before the work is done, a check certified by a solvent bank and payable to the commission in an amount to be fixed by the state highway engineer shall be deposited with the commission, to be used by the commission in restoring the road to its former condition if the person who disturbs the road fails to do so.

(2) The check is to be returned if the road is restored to its former condition by the person doing the work.

(3) Otherwise, the commission shall so restore the highway.



(4) Any balance remaining after the work is paid for by the commission shall be remitted to the person depositing the check.

**History.** Acts 1929, No. 65, § 57; Pope's Dig., § 6907; A.S.A. 1947, § 76-531.

### **27-67-219. John Paul Hammerschmidt Highway.**

(a) U.S. 71 from the I-40 intersection to the Missouri line shall be designated as the John Paul Hammerschmidt Highway within the State of Arkansas.

(b) In addition to that portion of U.S. 71 designated the John Paul Hammerschmidt Highway under subsection (a) of this section, that portion of U.S. 71 from its intersection with I-540 in Fort Smith, Arkansas, to the State Highway 10 exit near Greenwood, Arkansas, is hereby designated a part of the John Paul Hammerschmidt Highway.

(c) It shall be the responsibility of the Arkansas State Highway and Transportation Department to place appropriate highway identifying signs on the highway.

(d) The department shall erect appropriate signs along the section of the highway designated herein, indicating that the highway has been designated the John Paul Hammerschmidt Highway.

**History.** Acts 1989, No. 6, § 1; 1989, No. 535, § 1. new U.S. Highway 71 under construction during the 77th Session of the Arkansas General Assembly."

**Publisher's Notes.** Acts 1989, No. 6, § 2, provided: "This act shall apply to the

### **27-67-220. The Highway of Hope.**

(a) The route along U.S. 67 and State 7 between Hope and Hot Springs regularly traveled by the Honorable Bill Clinton, 42nd President of the United States, during his childhood, is hereby designated "The Highway of Hope".

(b) The Arkansas State Highway and Transportation Department shall erect appropriate signs along U. S. 67 and State 7 between Hope and Hot Springs designating the route as "The Highway of Hope".

**History.** Acts 1993, No. 784, §§ 1, 2.

**A.C.R.C. Notes.** References to "this chapter" in subchapters 1-3 may not apply to this section which was enacted subsequently.

**Publisher's Notes.** Acts 1993, No. 784, § 3, provided: "It is the intent and purpose of this act to encourage visitors to the state to venture off the interstate high-

ways and to enjoy more of Arkansas' scenic beauty and experience the culture found along its highways. It is further the intent and purpose of this act to request the Arkansas Highway and Transportation Department to erect appropriate signs along the route described and to thereby assist small communities along the route to develop tourism."

**27-67-221. Authority of Highway Department to inform amateur radio operators of high frequency radio repeaters.**

(a) The Arkansas State Highway and Transportation Department is authorized to post signs along the public streets and highways of Arkansas to inform persons who are licensed amateur radio operators of the existence of a high frequency radio repeater within a specific local area, provided such signs do not conflict with any rules or regulations of the United States Department of Transportation or the Manual on Uniform Traffic Control Devices.

(b)(1) The Arkansas State Highway and Transportation Department is authorized to develop and adopt the appropriate signs showing "TWO-METER RADIO REPEATER AREA" or "AMATEUR RADIO FREQUENCY MONITORED" for use in the designated areas along the public streets and highways under its jurisdiction.

(2) The signs may include the radio frequency of these local repeaters or the frequency being monitored by local radios.

(3)(A) Any local amateur radio operators or any amateur radio club wishing to participate in this program shall be responsible for the costs of preparing and purchasing these signs.

(B)(i) The Arkansas State Highway and Transportation Department is authorized to enter into an agreement with the participants to recover those costs.

(ii) The Arkansas State Highway and Transportation Department is authorized to prepare and furnish the signs to the local participating radio clubs or operators at cost.

(iii) The Arkansas State Highway and Transportation Department is further authorized to erect and maintain the signs at no cost to the local radio clubs or operators.

(c)(1) The Arkansas State Highway and Transportation Department is authorized to contact all local amateur radio operators and any amateur radio clubs in Arkansas to inform them of this service.

(2) Any amateur radio operator or radio club which wishes to participate in this program shall notify the Arkansas State Highway and Transportation Department of its interest and shall inform the Arkansas State Highway and Transportation Department of the radio frequencies which are monitored in its immediate area and the time periods during which they are monitored.

(d)(1) The Arkansas State Highway and Transportation Department shall ensure the signs correlate with and, so far as possible, conform to the system of traffic-control devices which are currently in use by the department.

(2) The Arkansas State Highway and Transportation Department is authorized to erect the signs and review, at least biennially, all areas with signs within its jurisdiction to ensure the area still qualifies for having the signs posted.

(e) The Director of the Arkansas State Highway and Transportation Department shall have the authority to promulgate any necessary rules

and regulations to implement this section and establish any conditions and guidelines for participation by any local amateur radio operators or clubs.

(f) For purposes of this section, “HF” means all bands of high frequencies.

**History.** Acts 1995, No. 1100, §§ 1-4.

to this section which was enacted subsequently.

**A.C.R.C. Notes.** References to “this chapter” in subchapters 1-3 may not apply

## **27-67-222. State police officer highway dedication program.**

(a)(1) “State police officer” means any employee of the Department of Arkansas State Police who holds the rank of state trooper or higher rank, including the Director of the Department of Arkansas State Police.

(2) The term “state police officer” does not include any:

(A) Civilian employee of the department; or

(B) Person who is temporarily employed as a state trooper during an emergency.

(b) A state police officer who has been killed on active duty within the State of Arkansas shall have a one-mile portion of a highway dedicated to him or her at or near the location of his or her death.

(c) The Arkansas State Highway and Transportation Department shall designate a one-mile portion of a highway as the Trooper \_\_\_\_\_ Memorial Highway by placing and maintaining appropriate identifying signs with a blue background and reflective silver lettering on the highway.

**History.** Acts 2007, No. 848, § 1; 2009, No. 483, § 8.

quently.

**A.C.R.C. Notes.** References to “this chapter” in subchapters 1-3 may not apply to this section which was enacted subse-

**Amendments.** The 2009 amendment subdivided (a)(2), and made related and minor stylistic changes.

## **27-67-223. Rock ‘n’ Roll Highway 67.**

(a) The route along Highway 67 through Jackson County, Lawrence County, and Randolph County regularly traveled by the great legends of early rock ‘n’ roll is hereby designated “Rock ‘n’ Roll Highway 67”.

(b) The State Highway and Transportation Department shall erect appropriate signs along Highway 67 through Jackson County, Lawrence County, and Randolph County designating the route as “Rock ‘n’ Roll Highway 67”.

**History.** Acts 2009, No. 497, § 2.

Acts 2009, No. 497, § 1, provided: “Legislative findings:

**A.C.R.C. Notes.** References to “this chapter” in subchapters 1-3 may not apply to this section which was enacted subsequently.

“The General Assembly finds that:

“(1) Arkansas has a great and varied music heritage;



"(2) The heritage includes a new type of music that emerged in the 1940s and 1950s called 'rock 'n' roll';

"(3) Some of the early 'rock 'n' roll' legends that regularly traveled Highway 67 through Jackson County, Lawrence County, and Randolph County to perform their new type of music included:

"(A) Elvis Presley;

"(B) Billy Lee Riley;

"(C) Sonny Burgess;

"(D) Roy Orbison;

"(E) Jerry Lee Lewis;

"(F) Carl Perkins;

"(G) Johnny Cash;

"(H) Conway Twitty, whose real name was Harold Jenkins;

"(I) Charlie Rich;

"(J) Ace Cannon;

"(K) Bobby Lee Trammell, a former Arkansas State Representative, who had a hit known as 'Arkansas Twist';

"(L) Fats Domino; and

"(M) The many others who played this route that contributed to the birth of rock 'n' roll.

"(4) The live performances by the rock 'n' roll legends were at many establishments along Highway 67 including:

"(A) The Silver Moon in Newport;

"(B) Porky's Rooftop in Newport;

"(C) Jarvis' Club in Newport;

"(D) Woody's Club in Newport;

"(E) The Newport Armory;

"(F) Charley's Place in Swifton;

"(G) B and I Club, later known as Bob King's Club and King's Capri Club between Swifton and Alicia;

"(H) Mike's 67 Club between Swifton and Alicia;

"(I) The Walnut Ridge Community Center; and

"(J) On the top of the Skylark Drive-in Theater in Pocahontas;

"(5) While academics and historians have indicated that a change in the name of this music to 'rockabilly' should be made, everyone who lived, breathed, and rocked during this time called the music rock 'n' roll; and

"(6) To honor our rock 'n' roll music heritage and all of those who enjoyed it then and continue to enjoy it today, the route that these legendary performers regularly made on Highway 67 through Jackson County, Lawrence County, and Randolph County should be recognized by officially naming it 'Rock 'n' Roll Highway 67'."

### SUBCHAPTER 3 — ACQUISITION, CONDEMNATION, AND DISPOSITION OF PROPERTY

#### SECTION.

27-67-301. Authority to acquire property.

27-67-302. State highway purposes.

27-67-303. Entry for suitability studies.

27-67-304. Use of right-of-way.

27-67-305. Commission discretion as to quantity of property acquired.

27-67-306. Leases.

27-67-307. Temporary easements.

27-67-308. Authority to compensate — Source of revenue.

27-67-309. Venue for condemnation actions.

27-67-310. Precedence of condemnation proceedings.

27-67-311. Condemnation petition — Notice.

27-67-312. Declaration of taking.

#### SECTION.

27-67-313. Motion to strike declaration of taking.

27-67-314. Right of entry.

27-67-315. Title vests upon deposit.

27-67-316. Condemnation proceedings and judgment.

27-67-317. Payment of award.

27-67-318. Hearing on amount of deposit.

27-67-319. Appeal not to delay vesting of title.

27-67-320. Acquisition when county court fails to grant petition.

27-67-321. Sale of surplus highway property.

27-67-322. Reacquisition of surplus property by former owner.

27-67-323. Reacquisition of abandoned land by city or town.

**Cross References.** Relocation assistance and payments to persons displaced due to project financed with federal funds, § 22-9-701 et seq.

Title to highways not acquired by adverse possession, § 22-1-201.

**Preambles.** Acts 1929, No. 205 contained a preamble which read: "Whereas, in many cases land owners are asking for lands required for right-of-ways for state highways, a price far in excess of the value of the lands; and

"Whereas, in a few cases the county courts have refused to procure needed right-of-way...."

Acts 1953, No. 419 contained a preamble which read: "Whereas, the acquisition of lands and property for State Highway purposes is an important part of the establishment of a State system of highways; and

"Whereas, the pressing need to modernize and improve the existing network of State highways makes necessary the enactment of a simple, direct and more efficient method of acquiring property for such purpose;

"Now, therefore...."

**Effective Dates.** Acts 1928 (1st Ex. Sess.), No. 2, § 8: approved Oct. 3, 1928. Emergency clause provided: "It is ascertained and declared that the construction of the state highways, and the due administration of the state highway department, is being injuriously affected by frivolous and groundless suits, and that the immediate operation of this act is essential for the protection of the State. An emergency is therefore declared, and this act shall take effect and be in force from and after its passage."

Acts 1929, No. 205, § 4: approved Mar. 27, 1929. Emergency clause provided: "It is hereby ascertained and declared that the inability to secure right-of-ways for state highways and excessive cost thereof is delaying the completion of our state highway system; that the improving of our state highway system is necessary for the safety of the traveling public, so that the immediate operation of this act is essential for the protection of the public safety and an emergency is therefore declared and this act shall take effect and be in force from and after its passage."

Acts 1933, No. 124, § 3: Mar. 18, 1933. Emergency clause provided: "Such lands now owned by the Highway Department

of the State of Arkansas, for its use and benefit being an unnecessary expense, and the State Highway funds being so depleted as to make it necessary to turn such assets into cash for the benefit of the State's Highway Department, and same being necessary for the immediate preservation of the public peace, health and safety, an emergency is hereby declared to exist and this act shall be in full force and effect from and after its passage and approval."

Acts 1955, No. 87, § 3: Feb. 21, 1955. Emergency clause provided: "It is hereby determined by the General Assembly that the present law relative to the acquiring of highway rights-of-way has worked an undue hardship upon the various counties of this State and that immediate action is necessary to correct such situation in order that the highway construction program of this state might be officially expanded. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1963, No. 99, § 2: Feb. 28, 1963. Emergency clause provided: "It is hereby found and declared by the General Assembly of the State of Arkansas that in a number of highway condemnation cases in the courts where the State deposits money as estimated just compensation for the landowners, and the court orders an additional deposit and permits the landowner to withdraw and use the additional deposit, the State Highway Department may suffer a loss of some of these funds in cases where the final award is less than the deposit of money in court, because of the possible inability of the landowner to repay the State the difference in such cases. Therefore an emergency is declared to exist and this act being necessary for the preservation of public peace, health and safety, shall take effect and be in force from the date of its approval."

Acts 1979, No. 894, § 2: Apr. 16, 1979. Emergency clause provided: "It is hereby found and determined by the General Assembly that statutory authorization for the entry on private property for the necessary purposes of precondemnation surveys and appraisals has been granted to numerous private corporations possessing the power of eminent domain, but that the



Arkansas State Highway and Transportation Department does not have a specific statutory authorization for such a peaceable, good faith entry for such necessary surveys before the institution of any formal condemnation proceedings. This disparity in the law creates confusion and the resultant lack of uniformity creates a resultant inequity placed upon public condemnors. Therefore an emergency is hereby declared to exist, and this Act, being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

Acts 2007, No. 562, § 2: Mar. 28, 2007. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that economic development, industrial growth and the continuation of rail service must be promoted in economically distressed areas of the state by establishing procedures pursuant to which the State Highway Commission can approve the transfer, by gift

or contract, to a regional intermodal facilities authority, a metropolitan port authority, or a planning and development district, or surplus rail and other track material purchased by the Arkansas State Parks, Recreation, and Travel Commission or the Department of Parks and Tourism or both partly through the use of federal Transportation Enhancement Funds granted by the State Highway Commission; and this act is necessary to accomplish these essential goals. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

## RESEARCH REFERENCES

**Ark. L. Rev.** Condemnation of Leased Property in Arkansas, 14 Ark. L. Rev. 326.

## CASE NOTES

### **Jurisdiction over Condemnation Proceedings.**

Where the State Highway Commission satisfied the requirements of this subchapter and paid an estimated deposit under § 27-67-314 in connection with its taking of property, the circuit court had

jurisdiction of the condemnation proceeding, and where no showing was made that fraud or collusion was involved, the judgment was not void. *Arkansas State Hwy. Comm'n v. Coffelt*, 301 Ark. 112, 782 S.W.2d 45 (1990).

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### **27-67-301. Authority to acquire property.**

(a) The State Highway Commission is authorized to acquire real or personal property, or any interest therein, deemed to be necessary or desirable for state highway purposes, by gift, devise, purchase, exchange, condemnation, or otherwise.

(b) These lands or real property may be acquired in fee simple or in any lesser estate.

**History.** Acts 1953, No. 419, § 1; A.S.A. 1947, § 76-532.



## CASE NOTES

## ANALYSIS

Constitutionality.  
Condemnation.  
Fee Simple Taking.  
Injunctive Relief.  
Jurisdiction.  
Public Use.

**Constitutionality.**

Acts 1929, No. 65, § 65, was unconstitutional insofar as it permitted the State Highway Commission to enter into possession of private property without first compensating the owner for the damages sustained. *Arkansas State Hwy. Comm'n v. Partain*, 192 Ark. 127, 90 S.W.2d 968 (1936) (decision under prior law).

**Condemnation.**

Where, for reasons satisfactory to a county court, the request of the State Highway Commission to provide suitable rights-of-way was refused, the commission could condemn the necessary right-of-way and pay therefor. *England v. State Hwy. Comm'n*, 177 Ark. 157, 6 S.W.2d 23 (1928) (decision under prior law).

Public agency's right of eminent domain is a constitutional privilege granted with limitations — first, there must be established the need for taking for public use or purpose; second, the condemnation must be according to law, which means that a lawsuit must be filed in circuit court and money tendered to compensate the landowner for the taking until the damages can be ascertained by a jury. *Robinson v. Arkansas State Game & Fish Comm'n*, 263 Ark. 462, 565 S.W.2d 433 (1978).

**Fee Simple Taking.**

A fee simple taking under Acts 1935, No. 419 places the predominant control of lands within a right-of-way in the State

Highway Commission; the utilization of the acquired property for highway purposes and for such purposes as are delegated to political subdivisions and utilities will, as a matter of law, take precedence over all other use. *Arkansas State Hwy. Comm'n v. Wallace*, 249 Ark. 303, 459 S.W.2d 812 (1970).

**Injunctive Relief.**

Where the landowners sat idly by for two and one-half years and watched construction of highway across their property without taking steps to protect their rights until contractors undertook the very last part of the construction necessary to complete the job, injunctive relief was barred. *Arkansas State Hwy. Comm'n v. Rice*, 259 Ark. 190, 532 S.W.2d 727 (1976).

**Jurisdiction.**

In a condemnation case where the landowners from the outset resisted equity jurisdiction, the basis of which was the state's petition for specific performance, the chancery court could not, after denying specific performance, assume jurisdiction to condemn the property and award damages under the "clean up doctrine." *Arkansas State Hwy. Comm'n v. Rice*, 259 Ark. 190, 532 S.W.2d 727 (1976).

**Public Use.**

There is a long established presumption under § 27-66-401, governing establishment of private roads, that the road will be for public use; there is no similar precedent under this section when condemning for highway purposes. *Dowling v. Erickson*, 278 Ark. 142, 644 S.W.2d 264 (1983).

**Cited:** *Arkansas State Highway Com. v. Bingham*, 231 Ark. 934, 333 S.W.2d 728 (1960).

**27-67-302. State highway purposes.**

State highway purposes shall include, but are not limited to, the following:

- (1) For present and future rights-of-way, including those necessary for urban extensions of state highways within municipalities;
- (2) For exchanging them for other property to be used for rights-of-way if the best interest of the state will be served and right-of-way costs reduced thereby;

(3) For rock quarries, gravel pits, sand or earth borrow pits, or related purposes, not being commercially operated;

(4) For offices, shops, storage yards, or other necessary or auxiliary facilities;

(5) For roadside areas or parks adjacent or adjoining or near any state highway;

(6) For the culture and support of trees and shrubbery which benefit any state highway by aiding in the maintenance and preservation of the roadbed or trees and shrubbery which aid in the maintenance and promote the attractiveness of the scenic beauty associated with any state highways;

(7) For drainage in connection with any state highway, or for cuts and fills, or channel changes or maintenance thereof;

(8) For the maintenance of an unobstructed view of any portion of a state highway so as to promote the safety of the traveling public;

(9) For the construction and maintenance of stock trails and cattle passes;

(10) For the elimination of public or private crossings or intersections at grade, or any state highway; and

(11) For the protection of the state highway system from both physical and functional encroachments of any kind.

**History.** Acts 1953, No. 419, § 1; A.S.A. 1947, § 76-532.

## CASE NOTES

### ANALYSIS

Access to Property.  
Burden of Proof.  
Instructions.  
Measure of Damages.  
Public Use.

### Access to Property.

A private landowner's access to property taken for highway purposes is subordinate not only to the use for public travel, but to the other public uses specifically mentioned in this section, such as roadside parks, support of trees and shrubs, and maintenance of an unobstructed view. *Arkansas State Hwy. Comm'n v. Wallace*, 247 Ark. 157, 444 S.W.2d 685 (1969).

Fee simple taking of right-of-way by State Highway Commission vested in the commission substantial control of coming and going of condemnee as to her remaining land on either side of highway so that instruction precluding consideration of such power of commission to restrict was erroneous. *Arkansas State Hwy. Comm'n*

*v. Wallace*, 247 Ark. 157, 444 S.W.2d 685 (1969).

### Burden of Proof.

The burden of proof is upon the State Highway Commission to prove that the exchange of condemned property for other property to be used for right-of-way would serve the best interest of the state and reduce right-of-way costs. *Arkansas State Hwy. Comm'n v. Morgan's Estate*, 243 Ark. 450, 420 S.W.2d 525 (1967).

### Instructions.

In condemnation action, where State Highway and Transportation Department, through its counsel, stated that the department would build the highway in accordance with the plan and the judgment could specify that in case the plans were changed there would be ground for a new taking and compensation to the landowner, it was error for the court to give an instruction that the property was being taken for highway purposes and then to read all 11 purposes which are set out in this section. *Arkansas State Hwy.*



Comm'n v. Lewis, 258 Ark. 836, 529 S.W.2d 142 (1975).

### Measure of Damages.

In condemnation proceedings, cost of restoring remaining land most nearly to its original status is admissible not as a measure of damages, but as an aid in determining the difference in the before and after value of the property. *Arkansas State Hwy. Comm'n v. Speck*, 230 Ark. 712, 324 S.W.2d 796 (1959).

Landowner's attorney was not suggesting to the jury that they could, in effect, return a quotient verdict, but was merely pointing out the range the testimony took, where in his closing argument he stated that if one added the differences of the testimony of all the landowner's witnesses one would get an average difference of a certain sum of money, that if one added the difference between the testimony of all the witnesses one would get another average figure, and that if one added the average differences between the top witness for the landowner and the top witness for the state one would get a certain figure. *Arkansas State Hwy. Comm'n v. Kennedy*, 234 Ark. 89, 350 S.W.2d 526 (1961).

Trial court properly refused to strike all the testimony of realtor, otherwise properly qualified, though he testified on cross-examination that he had considered the amounts paid by the State Highway Commission for other condemned lands in the area in reaching his estimate of damages, since he did not testify as to any certain figures concerning the amounts. *Arkansas State Hwy. Comm'n v. Kennedy*, 234 Ark. 89, 350 S.W.2d 526 (1961).

Where the jury's determination of damages to be awarded in an eminent domain action was well within the range of testimony of witnesses well qualified to speak upon the value of the land affected by the State Highway Commission's acquisition of an easement across the land, the determination was sufficiently supported by substantial evidence. *Arkansas State Hwy. Comm'n v. Kennedy*, 234 Ark. 89, 350 S.W.2d 526 (1961).

The trial court correctly permitted the value witness to testify that he took into consideration that the fee simple taking of condemnees' lands was a factor which would reduce the market value of their

lands because it would reasonably be expected to affect and impair the unrestricted right of the landowners' ingress and egress to their abutting residuals. *Arkansas State Hwy. Comm'n v. Marshall*, 253 Ark. 212, 485 S.W.2d 740 (1972).

In order for a landowner to show the value of his land in an eminent domain proceeding, it is competent for the landowner to show by a witness who is an engineer with special knowledge of the special advantages of the lands bearing upon its adaptability or availability for a particular purpose the facts that show the availability of the particular tract involved for that purpose as an element of value to one who might desire to acquire it for that purpose. *Arkansas State Highway Com. v. First Pyramid Life Ins. Co.*, 269 Ark. 278, 602 S.W.2d 609 (1980).

In an eminent domain proceeding to determine a landowner's award, a landowner is entitled to show every advantage that this property possesses, present and prospective, to have his witnesses state any and every fact concerning the property which he would naturally adduce in order to place it in an advantageous light if he were selling it to a private individual, and to show the availability of this property for any and all purposes for which it is plainly adapted or for which it is likely to have value and induce purchases. *Arkansas State Highway Com. v. First Pyramid Life Ins. Co.*, 269 Ark. 278, 602 S.W.2d 609 (1980).

### Public Use.

In a condemnation proceeding where the State Highway Commission sought to condemn a strip of land in a city lot for the asserted purpose of restoring public access to an adjacent parcel of land that was landlocked as a result of the recent construction of a highway, but where the commission's own witness testified that the purpose was to provide adjacent landowner with private driveway to reduce damages to his property, the taking of the private property was not for a "public use" and thus was not a proper exercise of the power of eminent domain. *Arkansas State Hwy. Comm'n v. Alcott*, 260 Ark. 225, 539 S.W.2d 432 (1976).

**Cited:** *Arkansas State Highway Com. v. Bingham*, 231 Ark. 934, 333 S.W.2d 728 (1960).



**27-67-303. Entry for suitability studies.**

(a) The Arkansas State Highway and Transportation Department and its agents and employees may enter upon real property and make surveys, examinations, photographs, tests, and samplings, or engage in other activities for the purpose of appraising the property or determining whether it is suitable and within the power of the condemnor to take for public use, if the entry is:

(1) Preceded by reasonable efforts to notify the owner, and any other person known to be in actual physical occupancy of the property, of the time, purpose, and scope of the planned entry and activities;

(2) Undertaken during reasonable daylight hours;

(3) Accomplished peaceably and without inflicting substantial injury; and

(4) Not in violation of any other statute.

(b) The entry and activities authorized by this section do not constitute a trespass in the absence of unnecessary damage occurring in effecting the survey or examination.

**History.** Acts 1979, No. 894, § 1; A.S.A. 1947, § 76-532.1.

**CASE NOTES****ANALYSIS**

Jurisdiction.  
Right of Entry.

**Jurisdiction.**

Where the Game and Fish Commission was proposing to create a lake, a chancery court had no jurisdiction to issue order permitting employees of the commission to enter on landowners' property for the purpose of making surveys and appraisals in connection with the lake project, since the action of the employees in going on the property to make such surveys and appraisals was a use of land inconsistent with the landowners' right to control and enjoy their property in fee simple absolute and was therefore a taking of a landowner's interest which taking must be in accordance with the law that insures that one's right of property is preserved, i.e., Ark. Const. Amend. 35, § 8 and § 27-67-301 et seq. *Robinson v. Arkansas State Game & Fish Comm'n*, 263 Ark. 462, 565 S.W.2d 433 (1978) (decision under prior law).

**Right of Entry.**

The entry upon another's land has been held not to be a right to be assumed by

anyone — private citizen or public agency. *Robinson v. Arkansas State Game & Fish Comm'n*, 263 Ark. 462, 565 S.W.2d 433 (1978) (decision under prior law).

Where the Game and Fish Commission was proposing to create a lake and desired to have its agents and employees go on private land for the purpose of making and conducting surveys and appraisals in connection with the project, since some landowners objected to the entering of their land by such agents and employees, the commission was required to proceed in circuit court in accordance with § 27-67-301 et seq. and obtain an easement for the purpose of conducting and making such surveys and appraisals and any incidental and necessary use of land that goes along with the conducting of such surveys, the description of land necessary to obtain such easement would have to be no more than a general description of land, and the amount of money that would have to be tendered in such a case would nearly always be a minimal amount. *Robinson v. Arkansas State Game & Fish Comm'n*, 263 Ark. 462, 565 S.W.2d 433 (1978) (decision under prior law).

**27-67-304. Use of right-of-way.**

(a) The rights-of-way provided for all state highways shall be held inviolate for state highway purposes, except as provided in subsections (b) and (c) of this section. No physical or functional encroachments, installations, signs other than traffic signs or signals, posters, billboards, roadside stands, gasoline pumps, or other structures or uses shall be permitted within the right-of-way limits of state highways.

(b) Political subdivisions, rural electric cooperatives, rural telephone cooperatives, private television cables, and public utilities of the state may use any right-of-way or land, property, or interest therein, the property of the State Highway Commission, for the purpose of laying or erecting pipelines, sewers, wires, poles, ditches, railways, or any other purpose, under existing agreements or permits or such agreements or permits hereinafter made by the commission or under existing laws, provided that such use does not interfere with the public use of the property for highway purposes.

(c) No private television cable shall be placed upon the right-of-way limit of any state highway until such person, firm, association, partnership, or corporation first executes a bond payable to the commission in an amount to be determined by the district engineer located in the district in which such cable is to be located.

**History.** Acts 1953, No. 419, § 5; 1975, No. 654, § 1; A.S.A. 1947, § 76-544.

**CASE NOTES****ANALYSIS**

Applicability.

Access by Landowners.

Encroachments.

Instructions.

Jurisdiction.

Private Signs.

**Applicability.**

The right to use the highway rights-of-way reserved by this section applies to controlled-access highways. *Arkansas State Hwy. Comm'n v. Arkansas Real Estate Co.*, 243 Ark. 738, 421 S.W.2d 882 (1967).

**Access by Landowners.**

Where the State Highway Commission acquires fee simple title to lands, it is held inviolate for state highway purposes, and a private adjoining landowner's access is subordinate to any authorized uses and the value affected accordingly. *Arkansas State Hwy. Comm'n v. Wallace*, 247 Ark. 157, 444 S.W.2d 685 (1969).

**Encroachments.**

State Highway Commission was entitled to have concrete island, gasoline pumps, steel posts, and other service station fixtures removed where they encroached on right-of-way. *Arkansas State Hwy. Comm'n v. Staples*, 239 Ark. 290, 389 S.W.2d 432 (1965).

There is no such thing as an authorized, reasonable, and necessary encroachment on a highway right-of-way; the General Assembly drew no distinction in subsection (a) between degrees or types of encroachments; nor did it differentiate between a right-of-way granted by easement or one held in fee simple; rights-of-way in general are inviolate and to be free from physical encroachments of any kind. *Arkansas State Hwy. Comm'n v. Townsend*, 313 Ark. 702, 858 S.W.2d 66 (1993).

Acquiescence by the State Highway Commission in allowing encroaching structures to remain on the right-of-way for a considerable period of time was not a persuasive reason to allow the encroachments to continue; the commission em-

ployees had no authority to engage in conduct to countermand a statutory directive and commit the state to encroachments in the right-of-way. *Arkansas State Hwy. Comm'n v. Townsend*, 313 Ark. 702, 858 S.W.2d 66 (1993).

#### **Instructions.**

It was permissible for court to give an instruction in the pertinent language of this section that forbids encroachments upon public highways, there being no unfairness in cautioning jury that owner could not alleviate hardship by encroaching upon public right-of-way in condemnation proceedings. *Arkansas State Hwy. Comm'n v. Wilmans*, 239 Ark. 281, 388 S.W.2d 916 (1965).

Fee simple taking of right-of-way by State Highway Commission vested in the commission substantial control of coming and going of condemnee as to her remaining land on either side of highway, so that instruction precluding consideration of this power of commission to restrict was

erroneous. *Arkansas State Hwy. Comm'n v. Wallace*, 247 Ark. 157, 444 S.W.2d 685 (1969).

#### **Jurisdiction.**

The adequacy of a legal remedy under this section did not render the chancery court wholly without jurisdiction. *Townsend v. Arkansas State Hwy. Comm'n*, 326 Ark. 731, 933 S.W.2d 389 (1996).

#### **Private Signs.**

The fact that a county highway superintendent gave the owner of a filling station abutting on a county highway permission to maintain a sign on the right-of-way of the highway did not give the owner the right to continue the encroachment after the highway was taken over by the state and became a state highway. *Buffalo v. Arkansas State Hwy. Comm'n*, 248 Ark. 406, 451 S.W.2d 737 (1970).

**Cited:** *Arkansas State Hwy. Comm'n v. Frierson*, 269 Ark. 81, 598 S.W.2d 420 (1980).

### **27-67-305. Commission discretion as to quantity of property acquired.**

In connection with the acquisition of lands, property, or interests therein for state highway purposes, the State Highway Commission, in its discretion, may acquire an entire lot, block, or tract of land or property, if by so doing the interests of the public will be best served, even though the entire lot, block, or tract is not immediately needed for state highway purposes.

**History.** Acts 1953, No. 419, § 4; A.S.A. 1947, § 76-543.

### **27-67-306. Leases.**

(a) The State Highway Commission, as lessor, is authorized and empowered to execute lease or rental agreements covering real property owned or held by the commission, the use of which for highway purposes is not immediately contemplated, for periods not to exceed one (1) year, upon reasonable terms and conditions.

(b) Any building or other erection remaining thereon at the expiration of the agreement shall be subject to removal upon ten (10) days' notice at no expense to the state.

**History.** Acts 1953, No. 419, § 8; A.S.A. 1947, § 76-547.



**27-67-307. Temporary easements.**

(a) Temporary easements for temporary uses by the State Highway Commission in connection with the establishment and construction of state highways may be acquired or condemned in the same manner as fee simple estates.

(b) After a temporary easement has served its intended purpose, the commission shall execute a release which shall be recorded in the recorder's office of the county wherein the affected lands or property are situated.

**History.** Acts 1953, No. 419, § 6; A.S.A. 1947, § 76-545.

**RESEARCH REFERENCES**

**U. Ark. Little Rock L.J.** Owen, Survey of Arkansas Law: Property, 2 U. Ark. Little Rock L.J. 275.

**CASE NOTES****Game and Fish Commission.**

The Game and Fish Commission, which has the same authority as the State Highway Commission, may obtain a temporary easement pursuant to this section. *Robinson v. Arkansas State Game & Fish Comm'n*, 263 Ark. 462, 565 S.W.2d 433 (1978).

Where the Game and Fish Commission was proposing to create a lake and desired to have its agents and employees go on private land for the purpose of making and conducting surveys and appraisals in connection with the project, since some landowners objected to the entering of their land by such agents and employees,

the commission was required to proceed in circuit court in accordance with § 27-67-301 et seq. and obtain an easement for the purpose of conducting and making such surveys and appraisals and any incidental and necessary use of land that goes along with conducting such surveys, the description of land necessary to obtain such easement would have to be no more than a general description of land, and the amount of money that would have to be tendered in such a case would nearly always be a minimal amount. *Robinson v. Arkansas State Game & Fish Comm'n*, 263 Ark. 462, 565 S.W.2d 433 (1978).

**27-67-308. Authority to compensate — Source of revenue.**

(a) The State Highway Commission is authorized to make payment for any land or other real property acquired under the provisions of this act out of any appropriation made for state highway construction.

(b) With respect to the costs of acquiring lands and real property for state highway purposes, the commission shall assess counties in which the land or property is located no part of the cost with respect to highways in the primary system and fifty percent (50%) of the cost with respect to highways in the secondary system. The county portion shall be deducted from the next payment due any county by reason of any appropriation out of the State Highway and Transportation Department Fund or state revenue from gasoline as motor vehicle fuel or automobile license tax to the county or county highway fund of the county.

(c) The cost of removing man-made obstructions from the right-of-way shall be borne by the state, except that any such obstructions which shall have been erected upon a dedicated or condemned highway right-of-way after it shall have been so dedicated or condemned shall be removed by the owner or at the owner's expense.

**History.** Acts 1953, No. 419, § 7; 1955, 419 codified as §§ 27-67-301, 27-67-302, No. 87, § 1; A.S.A. 1947, § 76-546. 27-67-304 — 27-67-308, 27-67-310, 27-67-

**Meaning of "this act".** Acts 1953, No. 311, 27-67-316, 27-67-322.

### **27-67-309. Venue for condemnation actions.**

Actions by the commission to condemn a right-of-way shall be brought in the county where the land is situated.

**History.** Acts 1928 (Ex. Sess.), No. 2, § 6; Pope's Dig., § 6520; A.S.A. 1947, § 76-237.

### **27-67-310. Precedence of condemnation proceedings.**

Court proceedings necessary to acquire land, property, or property rights for state highway purposes shall take precedence over all other causes not involving the public interest, to the end that an improved system of state highways is expedited.

**History.** Acts 1953, No. 419, § 3; A.S.A. 1947, § 76-542.

**Cross References.** Priority of cases, § 27-64-104.

## **CASE NOTES**

**Cited:** Arkansas State Highway Com. v. Bingham, 231 Ark. 934, 333 S.W.2d 728 (1960).

### **27-67-311. Condemnation petition — Notice.**

(a) The State Highway Commission may exercise its power of eminent domain by filing an appropriate petition in condemnation in the circuit court of the county in which the property sought to be taken is situated, to have the compensation for right-of-way determined, giving the owner of the property to be taken at least ten (10) days' notice in writing of the time and place where the petition will be heard.

(b) If the property sought to be condemned is located in more than one (1) county, the petition may be filed in any circuit court having jurisdiction in any county in which the whole or part of the property may be located. The proceedings had in the circuit court will apply to all such property described in the petition.

(c)(1) If the owner of the property sought to be taken is a nonresident of the state, notice shall be by publication in any newspaper in the county which is authorized by law to publish legal notices. This notice

shall be published for the same length of time as may be required in other civil causes.

(2) If there is no such newspaper published in the county, then publication shall be made in a newspaper designated by the circuit clerk, and one (1) written or printed notice thereof posted on the door of the county courthouse.

(d) The condemnation petition shall describe the lands and property sought to be acquired for state highway right-of-way purposes and shall be sworn to.

(e) Where the immediate possession of lands and property is sought to be obtained, the Arkansas State Highway and Transportation Department may file a declaration of taking, as provided by § 27-67-312, at any time before judgment or together with the condemnation petition.

**History.** Acts 1953, No. 419, § 2; A.S.A. 1947, § 76-533.

## CASE NOTES

### ANALYSIS

Owners.  
Remaindermen.

#### **Owners.**

Where the State Highway Commission admitted appropriating land under eminent domain procedure and admitted damages, and the real owner of the land could not be held responsible for failure of commission to name the correct owner of the title, the failure of real owner to intervene until seven days after an erroneously named owner received the money did not

disentitle him to protection of the Arkansas Constitution for the value of the land, having been guilty of no laches, negligence, or delay. *Arkansas Real Estate Co. v. Arkansas State Hwy. Comm'n*, 237 Ark. 1, 371 S.W.2d 1 (1963).

#### **Remaindermen.**

A condemnation judgment taken without notice to remaindermen of the land condemned was void as to the remaindermen. *Arkansas State Hwy. Comm'n v. Roberts*, 428 Ark. 1005, 455 S.W.2d 125 (1970).

## **27-67-312. Declaration of taking.**

(a) In any proceeding instituted by and in the name of the State of Arkansas, involving the acquisition of any real property or any interest therein or any easements for public highway purposes, the petitioner may file a declaration of taking at any time before judgment signed by the Director of State Highways and Transportation, or with the condemnation petition, declaring that the real property or any interest therein or any easement is thereby taken for the use of the State of Arkansas.

(b) The declaration of taking shall contain or have annexed thereto the following:

(1) A statement of the authority under which the property or any interest therein or any easement is taken;

(2) A statement of the public use for which such property or any interest therein or any easement is taken;



(3) A description of the property taken or any interest therein or an easement, sufficient for the identification thereof;

(4) A plat showing the property taken or any interest therein or any easement; and

(5) A statement of the amount of money estimated by the acquiring agency to be just compensation for the property taken, or any interest therein or any easement.

**History.** Acts 1953, No. 115, §§ 1, 2; A.S.A. 1947, §§ 76-534, 76-535.

### CASE NOTES

#### **Statement of Just Compensation.**

A statement of just compensation as required by this section is not a negotiation or settlement figure excluded by Evid. Rule 408. *Arkansas State Highway Com. v. Johnson*, 300 Ark. 454, 780 S.W.2d 326 (1989).

**Cited:** *Arkansas State Hwy. Comm'n v. Blakley*, 231 Ark. 273, 329 S.W.2d 158 (1959); *Rowley v. Arkansas State Hwy. Comm'n*, 242 Ark. 419, 413 S.W.2d 876 (1967); *Arkansas State Hwy. Comm'n v. Taylor*, 269 Ark. 458, 602 S.W.2d 657 (1989).

#### **27-67-313. Motion to strike declaration of taking.**

(a) In any case in which a declaration of taking has been filed as provided in § 27-67-312, any defendant desiring to raise any question with respect to the validity of the taking shall do so by filing a motion to strike the declaration of taking and dismiss the suit.

(b) The motion shall be made on or before the return day mentioned in the summons or notice of publication, or within twenty (20) days after the filing of the declaration of taking, whichever is later.

(c) Failure to file such motion within the time herein provided shall constitute a waiver of the right of any defendant to challenge the validity of the taking.

**History.** Acts 1953, No. 115, § 7; A.S.A. 1947, § 76-540.

#### **27-67-314. Right of entry.**

(a) Upon the filing of the declaration of taking and the deposit with the clerk of the circuit court of the estimated compensation, the State of Arkansas shall thereupon have the right of entry and the parties in possession shall be required to surrender possession to the petitioner, upon such terms as shall be fixed by the court.

(b) If, for any reason, the right of entry is postponed by the court in any case where the party in possession has withdrawn any part of the award, the court may fix a reasonable rental for the premises to be paid by the party to the State of Arkansas during such occupancy.

(c) The court shall also have the power to direct the payment of delinquent taxes and special assessments out of the amount determined to be just compensation, and to make such orders with respect to

encumbrances, liens, rents, insurance, and other charges, as shall be just and equitable.

(d) The right to take possession and title in advance of final judgment in condemnation proceedings as provided in §§ 27-67-312 — 27-67-315, 27-67-316(a)-(e), and 27-67-317 — 27-67-319 shall be in addition to any right, power, or authority conferred by the laws of this state under which such proceedings may be conducted and shall not be construed as abrogating, limiting, or modifying any such right, power, or authority.

**History.** Acts 1953, No. 115, § 5; A.S.A. 1947, § 76-538.

## CASE NOTES

### ANALYSIS

Bond as Condition.

Interest.

Withdrawals of Deposits.

#### **Bond as Condition.**

It is not error to require State Highway Commission to make a bond as a condition of an order restraining interference with road work on the land of a property owner. *Arkansas State Hwy. Comm'n v. Marlar*, 236 Ark. 385, 366 S.W.2d 191 (1963).

#### **Interest.**

The trial court's award of an 11.77% interest rate on the amount of the condemnation award in excess of the original deposit into escrow was fully supported by the evidence where the average of rates paid on certificates of deposit at a local financial institution was 11.77%. *Arkan-*

*sas State Hwy. Comm'n v. Security Sav. Ass'n*, 19 Ark. App. 133, 718 S.W.2d 456 (1986).

#### **Withdrawals of Deposits.**

Under § 27-67-317, the court may not only permit withdrawals of deposits under this section and § 27-67-315, but also withdrawal of the additional deposit permitted under § 27-67-318. *Adams v. Arkansas State Hwy. Comm'n*, 235 Ark. 808, 363 S.W.2d 134 (1962).

**Cited:** *Arkansas State Hwy. Comm'n v. Muswick Cigar & Beverage Co.*, 231 Ark. 265, 329 S.W.2d 173 (1959); *Rowley v. Arkansas State Hwy. Comm'n*, 242 Ark. 419, 413 S.W.2d 876 (1967); *Arkansas State Hwy. Comm'n v. Taylor*, 269 Ark. 458, 602 S.W.2d 657 (1980); *Arkansas State Hwy. Comm'n v. Coffelt*, 301 Ark. 112, 782 S.W.2d 45 (1990).

### **27-67-315. Title vests upon deposit.**

Immediately upon the making of the deposit provided for in § 27-67-314, title to the lands in fee simple, or a conditional fee if mineral rights are sought to be preserved to the property owner, or a lesser estate or interest therein as is specified in the declaration, shall vest in the persons entitled thereto.

**History.** Acts 1953, No. 115, § 3; A.S.A. 1947, § 76-536.

## CASE NOTES

## ANALYSIS

Amendment of Complaint.  
Offset Against Damages.  
Withdrawals of Deposits.

**Amendment of Complaint.**

After filing its declaration of taking and its deposit, title to the land concerned vests in the State Highway Commission, and it cannot thereafter amend its complaint to reduce the amount of land so taken. *Rowley v. Arkansas State Hwy. Comm'n*, 242 Ark. 419, 413 S.W.2d 876 (1967).

**Offset Against Damages.**

Once title of a taking has vested in condemnor, he cannot then offset benefits

created by a second taking against damages deposited in the prior taking. *Arkansas State Hwy. Comm'n v. Choate*, 256 Ark. 45, 505 S.W.2d 731 (1974).

**Withdrawals of Deposits.**

Under § 27-67-317, the court may not only permit withdrawals of deposits under this section and § 27-67-314, but also withdrawal of the additional deposit permitted under § 27-67-318. *Adams v. Arkansas State Hwy. Comm'n*, 235 Ark. 808, 363 S.W.2d 134 (1962).

**Cited:** *Arkansas State Hwy. Comm'n v. Security Sav. Ass'n*, 19 Ark. App. 133, 718 S.W.2d 456 (1986); *Bryant v. Springhill Water & Sewer Servs., Inc.*, 295 Ark. 333, 750 S.W.2d 61 (1988).

**27-67-316. Condemnation proceedings and judgment.**

(a) It shall be the duty of the circuit court to impanel a jury of twelve (12) persons, as in other civil cases, to ascertain the amount of compensation which the Arkansas State Highway and Transportation Department shall pay.

(b) The matter shall proceed and be determined as in other civil cases.

(c) In all cases of infants or persons of unsound mind, when no legal representative or guardian appears in their behalf at the hearing, it shall be the duty of the court to appoint a guardian ad litem, who shall represent their interest for all purposes.

(d) Compensation shall be ascertained and awarded in the proceeding and established by judgment therein.

(e)(1) Judgment shall include, as a part of the just compensation awarded, interest at the rate of six percent (6%) per annum on the amount finally awarded as the value of the property, from the date of the surrender of possession to the date of payment, but interest shall not be allowed on so much thereof as may have been paid into court.

(2) No sum so paid into court shall be charged with commission or poundage.

(f) All courts and juries in cases of condemnation of lands for rights-of-way for state highways shall take into consideration the fact that lands are required to be assessed at fifty percent (50%) of their true value and shall also take into consideration the fact that owners of automobiles and trucks living miles off a state highway pay the same gasoline and auto license tax as those being fortunate enough to own land adjoining a state highway. Any court or jury considering claims for right-of-way damages shall deduct from the value of any land taken for a right-of-way the benefits of the state highway to the remaining lands of the owner.



(g) All suits involving the validity of subsection (f) of this section, or any portion thereof, shall be deemed matters of public interest and shall be advanced and disposed of at the earliest possible moment, and appeals in such suits must be taken and perfected within thirty (30) days from the date of the judgment or decree.

**History.** Acts 1929, No. 205, §§ 1, 3; 115, § 3; 1953, No. 419, § 2; A.S.A. 1947, Pope's Dig., §§ 6962, 6964; Acts 1953, No. §§ 76-512, 76-521, 76-533, 76-536.

## RESEARCH REFERENCES

**Ark. L. Notes.** Brill, A Primer on Judgment and Pre-Judgment Interest in Arkansas, 1989 Ark. L. Notes 1.

**Ark. L. Rev. Note,** Compound Pre-

Judgment Interest as an Element of Just Compensation: *Wilson v. City of Fayetteville*, 47 Ark. L. Rev. 937.

## CASE NOTES

### ANALYSIS

Construction.

Damages.

—Enhancement of Value.

Evidence.

—Expert Witnesses.

—Hearsay.

—Value of Property.

Injunctive Relief.

Instructions.

Interest.

Jurisdiction.

Jury Questions.

### Construction.

With regard to awards made in condemnation proceedings by the State Highway Commission, this section is the more specific provision and controls over § 16-65-114. *Arkansas State Hwy. Comm'n v. Scott*, 264 Ark. 397, 571 S.W.2d 607 (1978).

### Damages.

The measure of damages for the taking of private property for highway purposes is the difference in the fair market value of the lands immediately before the taking and immediately after, less any enhancement in value resulting from the taking; in arriving at "before and after" value of the lands, a jury may consider every element that can fairly enter into the question of market value that a businessman of ordinary prudence would consider before purchasing the property. *Barnes v. Arkansas State Hwy. Comm'n*, 10 Ark. App. 375, 664 S.W.2d 884 (1984).

### —Enhancement of Value.

That value of remaining portions of lots was enhanced by fact that road had been widened and that owners had been freed and relieved from dust incident to traffic over old gravel road could be considered on issue of damages, though enjoyed by all others having property adjacent to the new road. *Bridgman v. Baxter County*, 202 Ark. 15, 148 S.W.2d 673 (1941).

In action by property holders against the county to recover damages to their land when county condemned part of their land for purpose of building a paved highway, evidence that their land increased in value as a result of paved highway sustained verdict for county, though other property owners whose land had not been condemned also profited. *Ball v. Independence County*, 214 Ark. 694, 217 S.W.2d 913 (1949).

Under this section, a landowner is not entitled to recover anything for the taking of a part of his property to improve a road where the remainder of land left to him is enhanced in value in an amount equal to or greater than the value of that part taken. *Martin v. Newton County*, 239 Ark. 769, 394 S.W.2d 133 (1965).

### Evidence.

Admission of photographs taken of property in question in eminent domain proceedings before and after construction by the state was not an abuse of the trial court judge's discretion. *Arkansas State Hwy. Comm'n v. Webster*, 236 Ark. 491, 367 S.W.2d 233 (1963).

In an eminent domain case, a property owner was entitled to a new trial on the issue of just compensation because the jury's verdict showed that the jury relied on the testimony of an appraiser for the Arkansas State Highway Commission and such testimony was contrary to the physical facts and presented a valuation based on a faulty assumption. The appraiser assumed that the entire tract could be fully accessed from the south, which it could not, and based on such faulty assumption, he reached the conclusion that the tract had not diminished in value by the loss of access to the north. *Ark. State Highway Comm'n v. Wood*, 102 Ark. App. 348, 285 S.W.3d 256 (2008).

#### —Expert Witnesses.

Real estate dealers who testified as experts for condemnee and who stated that they were familiar with land values in the vicinity were not required to state facts and reasons forming basis for their opinions as to fair market value of condemnee's property before and after condemnation. *Arkansas State Hwy. Comm'n v. Johns*, 236 Ark. 585, 367 S.W.2d 436 (1963).

Value testimony of landowner's expert witness was deficient and lacked reasonable basis where witness testified on cross-examination that he established the "before" value by the use of comparable sales, but was unable to give the size or dimensions of the property involved in the sales and, furthermore, failed at any time to demonstrate a sufficient knowledge of any sales of lands for residential purposes in the area, the witness having classified the condemned land as being residential as to its highest and best use. *Arkansas State Hwy. Comm'n v. Bowman*, 253 Ark. 890, 490 S.W.2d 112 (1973).

It is not always necessary that the opinion of a qualified expert on real estate valuation be supported by comparable sales to be admissible or to constitute substantial evidence, at least where comparable sales are not to be found. *Arkansas State Hwy. Comm'n v. Steen*, 253 Ark. 908, 489 S.W.2d 781 (1973).

Jury consideration of a naked opinion of value of an expert witness that is not based upon a recognized scientific method of appraisal should be approached with caution and permitted only in unusual cases. *Arkansas State Hwy. Comm'n v.*

*Steen*, 253 Ark. 908, 489 S.W.2d 781 (1973).

Where the expert for a landowner in an eminent domain proceeding mentioned prospects only and never indicated that there had been an offer to purchase by any of them or the terms of any offer, the expert was not violating the pretrial order of the court against presenting evidence as to offers for the purchase of the property because he was not talking about offers to buy. *Arkansas State Highway Com. v. First Pyramid Life Ins. Co.*, 269 Ark. 278, 602 S.W.2d 609 (1980).

In order for a landowner to show the value of his land in an eminent domain proceeding, it is competent for the landowner to show by a witness who is an engineer with special knowledge of the special advantages of the lands bearing upon its adaptability or availability for a particular purpose the facts that show the availability of the particular tract involved for that purpose as an element of value to one who might desire to acquire it for that purpose. *Arkansas State Highway Com. v. First Pyramid Life Ins. Co.*, 269 Ark. 278, 602 S.W.2d 609 (1980).

Where the consulting engineer to the industrial park from which a right-of-way for a freeway was taken testified that he told the developers not to locate a sewerage treatment plant on the valuable industrial land, the engineer never expressed an opinion as to the monetary value of the industrial land, and therefore, his testimony was not improper since the trial court found that his expert testimony would assist the jury in understanding the other evidence. *Arkansas State Highway Com. v. First Pyramid Life Ins. Co.*, 269 Ark. 278, 602 S.W.2d 609 (1980).

#### —Hearsay.

In a condemnation proceeding, expert or lay testimony is competent even though it is based, wholly or partly, upon mere hearsay. *Arkansas State Hwy. Comm'n v. Russell*, 240 Ark. 21, 398 S.W.2d 201 (1966).

In a condemnation proceeding, on direct examination, a witness should not be allowed to repeat hearsay statements made by others or to testify about mere offers or other matters inadmissible under the rules of evidence; however, if cross examination demonstrates that the witness has no reasonable basis whatever for his opinion, then his testimony should be stricken.



Arkansas State Hwy. Comm'n v. Russell, 240 Ark. 21, 398 S.W.2d 201 (1966).

### —Value of Property.

In proceedings for assessment of damages for lands taken for right-of-way, ruling on cross-examination of landowner excluding his testimony as to assessed valuation of his land was not prejudicial where witness did not know such valuation and no objection was made or exception preserved. *Montgomery County v. Cearley*, 192 Ark. 868, 95 S.W.2d 554 (1936).

This section is not controlling; rather, value of land is ascertained from all the evidence introduced. *Washington County v. Day*, 196 Ark. 147, 116 S.W.2d 1051 (1938).

Refusal of trial court to permit property owner to be cross-examined as to assessed valuation of property could not be complained of by county where tax assessor subsequently testified that the assessed valuation of property in the county had practically no relation to the actual value of the property assessed, there was no attempt to recall the property owner for further cross-examination after the testimony of the tax assessor, and there was no showing that the owner personally knew the assessed valuation of his property. *Union County v. Richardson*, 225 Ark. 997, 287 S.W.2d 1 (1956).

The assessed valuation of land is not a controlling factor in arriving at the value of condemned property, although it is a factor to be considered. *Union County v. Richardson*, 225 Ark. 997, 287 S.W.2d 1 (1956).

Evidence of assessed valuation of land is properly admissible in condemnation cases and while such valuation is not controlling, the jury has the right to consider such assessed valuation along with all the other evidence in determining the value of the lands taken. *Omohundro v. Saline County*, 226 Ark. 253, 289 S.W.2d 185 (1956).

Evidence of assessed valuation of land may properly be considered in determining the actual value of land in condemnation case. *Arkansas State Hwy. Comm'n v. Snowden*, 233 Ark. 565, 345 S.W.2d 917 (1961).

A landowner's testimony as to what the property is worth to him is not substantial evidence, and condemnee's explanation of

the value he ascribed to the property is not a fair and reasonable basis for such valuation where he testifies that his estimate is not based on anything and represents what the property is worth to him. *Arkansas State Hwy. Comm'n v. Bowman*, 253 Ark. 890, 490 S.W.2d 112 (1973).

In an eminent domain proceeding to determine a landowner's award, a landowner is entitled to show every advantage that his property possesses, present and prospective, to have his witnesses state any and every fact concerning the property which he would naturally adduce in order to place it in an advantageous light if he were selling it to a private individual and to show the availability of this property for any and all purposes for which it is plainly adapted or for which it is likely to have value and induce purchases. *Arkansas State Highway Com. v. First Pyramid Life Ins. Co.*, 269 Ark. 278, 602 S.W.2d 609 (1980).

In an eminent domain proceeding where opinion testimony as to real estate values is based only on comparable sales, it should be stricken for want of a reasonable basis when it is shown that no sale considered by the witness was of land comparable to that involved in the trial; however, the mere fact that a witness considers a sale that is not comparable, along with others, in arriving at his opinion as to value, is not a basis for excluding his testimony. *Arkansas State Highway Com. v. First Pyramid Life Ins. Co.*, 269 Ark. 278, 602 S.W.2d 609 (1980).

### Injunctive Relief.

Where landowners sat idly by for two and one-half years and watched construction of highway across their property without taking steps to protect their rights until contractors undertook the very last part of the construction necessary to complete the job, injunctive relief was barred. *Arkansas State Hwy. Comm'n v. Rice*, 259 Ark. 190, 532 S.W.2d 727 (1976).

### Instructions.

Instructions that the measure of damages would be the difference between the fair market value of the entire tract of land before the taking and the fair market value of the remaining land after the taking for highway purposes are proper by a trial court judge. *Arkansas State Hwy.*



Comm'n v. Webster, 236 Ark. 491, 367 S.W.2d 233 (1963).

### Interest.

Interest on the amount of compensation awarded in excess of the amount deposited shall run from the date of surrender of possession by the landowner. Arkansas State Hwy. Comm'n v. Muswick Cigar & Beverage Co., 231 Ark. 265, 329 S.W.2d 173 (1959); Foster v. Arkansas State Hwy. Comm'n, 263 Ark. 62, 562 S.W.2d 298 (1978).

In a condemnation proceeding in which the State Highway Commission was compelled to deposit in court a great deal more money than the jury later found the land to have been worth, giving the landowners the use of the excessive deposit for more than two years, it was held that, since the landowners had obtained the excessive deposit through their own efforts, they would be liable for interest at the rate of six percent per annum. Arkansas State Hwy. Comm'n v. Rich, 235 Ark. 858, 362 S.W.2d 429, 99 A.L.R.2d 878 (1962).

Junkyard owner who sought damages for the relocation of his junkyard was not entitled to interest on the compensation award where, as of the trial date, he had not completed relocating or removing the debris and old automobiles from the yard and thus had not surrendered possession. Foster v. Arkansas State Hwy. Comm'n, 263 Ark. 62, 562 S.W.2d 298 (1978).

As a matter of just compensation and due process, a landowner cannot be denied interest on the unpaid part of an award during the time he is deprived both of the use of the land and of the money representing its value; he is entitled to

such an addition as will produce the full equivalent of the value as if paid contemporaneously with the taking; interest "at a proper rate" is a good measure by which to ascertain the amount to be added; where a constitutional right is involved, the interest rate to be allowed may exceed that specified by statute. Arkansas State Hwy. Comm'n v. Vick, 284 Ark. 372, 682 S.W.2d 731 (1985).

For case discussing issue of whether just compensation under the Arkansas Constitution includes compound interest in land condemnation cases, see Wilson v. City of Fayetteville, 310 Ark. 154, 835 S.W.2d 837 (1992).

### Jurisdiction.

In a condemnation case, where the landowners from the outset resisted equity jurisdiction, the basis of which was the state's petition for specific performance, the chancery court could not, after denying specific performance, assume jurisdiction to condemn the property and award damages under the "clean up doctrine." Arkansas State Hwy. Comm'n v. Rice, 259 Ark. 190, 532 S.W.2d 727 (1976).

### Jury Questions.

Conflicting opinions of witnesses who testify as to values, damages, and benefits are for jury to reconcile. Bridgman v. Baxter County, 202 Ark. 15, 148 S.W.2d 673 (1941).

**Cited:** Arkansas State Hwy. Comm'n v. Security Sav. Ass'n, 19 Ark. App. 133, 718 S.W.2d 456 (1986); Wilson v. City of Fayetteville, 310 Ark. 154, 835 S.W.2d 837 (1992); Arkansas State Hwy. Comm'n v. Lee Wilson & Co., 43 Ark. App. 22, 858 S.W.2d 137 (1993).

## 27-67-317. Payment of award.

(a) Upon the application of any party in interest and upon due notice to all parties, the court may order that the money deposited in the court, or any part thereof, be paid immediately to the person or persons entitled thereto.

(b) If the compensation finally awarded shall exceed the amount of money so deposited, the court shall enter judgment against the State of Arkansas and in favor of the parties entitled thereto for the amount of the deficiency.

(c) If the compensation finally awarded shall be less than the amount of money so deposited and paid to the persons entitled thereto, the court shall enter judgment in favor of the State of Arkansas and against the proper parties for the amount of the excess.

**History.** Acts 1953, No. 115, § 4; A.S.A. 1947, § 76-537.

## CASE NOTES

### ANALYSIS

Purpose.

Interest.

Proof of Value.

Reasonableness of Award.

Recovery of Money.

Withdrawals of Deposits.

#### **Purpose.**

Argument that this section applied only to the original deposit made by the State Highway Commission and not to any additional amount required by a court due to its discretion did not impress the court, which felt the General Assembly plainly intended for a landowner to have an immediate right to withdraw the estimated compensation and that the court had discretionary power over the amount to be paid regardless of the commission's concern as to inability to repay funds received in an excessive amount. *Adams v. Arkansas State Hwy. Comm'n*, 235 Ark. 808, 363 S.W.2d 134 (1962).

The General Assembly plainly intended for a landowner, in a proper case, to have an immediate right to withdraw the estimated compensation when the full amount was fully deposited in the first instance by the State Highway Commission; the court could think of no good reason for finding a contrary legislative intent merely because the deposit of full and fair compensation had to be directed by a court. *Adams v. Arkansas State Hwy. Comm'n*, 235 Ark. 808, 363 S.W.2d 134 (1962).

#### **Interest.**

In a condemnation proceeding in which the State Highway Commission was compelled to deposit in court a great deal more money than the jury later found the land to have been worth, giving the landowners the use of the excessive deposit for more than two years, it was held that, since the landowners had obtained the excessive deposit through their own efforts, they would be liable for interest at the rate of six percent per annum. *Arkansas State*

*Hwy. Comm'n v. Rich*, 235 Ark. 858, 362 S.W.2d 429, 99 A.L.R.2d 878 (1962).

#### **Proof of Value.**

The latitude allowed the parties in bringing out collateral or cumulative facts to support value estimates made by witnesses in eminent domain proceedings is left largely to the discretion of the presiding judge, and it is proper to allow the introduction of evidence tending to show the highest and best use of the property, independent of, and prior to, testimony as to values of lands taken, because evidence is relevant and admissible if it tends to show that the cost of making property available for a use other than that to which it was devoted is consistent with profitability. *Arkansas State Highway Com. v. First Pyramid Life Ins. Co.*, 269 Ark. 278, 602 S.W.2d 609 (1980).

#### **Reasonableness of Award.**

In eminent domain proceeding, jury award was held not to be excessive in view of the testimony of at least three experts that the value of the right-of-way taken was greater than award. *Arkansas State Highway Com. v. First Pyramid Life Ins. Co.*, 269 Ark. 278, 602 S.W.2d 609 (1980).

#### **Recovery of Money.**

Where one erroneously named by State Highway Commission as owner of land appropriated under eminent domain procedure, with consent of commission, received money deposited from the registry of the court, the commission, having paid the money through error, could recover it from the erroneously named owner. *Arkansas Real Estate Co. v. Arkansas State Hwy. Comm'n*, 237 Ark. 1, 371 S.W.2d 1 (1963).

#### **Withdrawals of Deposits.**

Under this section, the court may not only permit withdrawals of deposits under §§ 27-67-314 and 27-67-315, but also withdrawal of the additional deposit permitted under § 27-67-318. *Adams v. Arkansas State Hwy. Comm'n*, 235 Ark. 808, 363 S.W.2d 134 (1962).



**27-67-318. Hearing on amount of deposit.**

(a) If, after due notice, any party in interest should feel aggrieved at the amount of the estimated compensation as deposited by the Arkansas State Highway and Transportation Department in the registry of the circuit court, the party shall be entitled to a hearing, at which time evidence may be heard and received concerning the adequacy of the deposit.

(b) Thereafter, the circuit court shall, in its discretion, determine whether the present deposit is adequate, and if not, shall determine the additional amount which the department shall deposit. Such additional amount ordered deposited shall remain in the registry of the court without withdrawal until final adjudication of just compensation, but the additional deposit shall not prevent the accrual of interest on the difference in the amount of the original deposit and the compensation awarded as provided in §§ 27-67-315 and 27-67-316.

(c) This hearing and adjudication shall in no way interfere with the possession of the premises by the department.

**History.** Acts 1953, No. 115, § 8; 1963, No. 99, § 1; A.S.A. 1947, § 76-541.

**CASE NOTES****ANALYSIS**

Proof of Value.  
Substantial Evidence.  
Withdrawals.

**Proof of Value.**

The latitude allowed the parties in bringing out collateral or cumulative facts to support value estimates made by witnesses in eminent domain proceedings is left largely to the discretion of the presiding judge, and it is proper to allow the introduction of evidence tending to show the highest and best use of the property, independent of, and prior to, testimony as to values of lands taken, because evidence is relevant and admissible if it tends to show that the cost of making property available for a use other than that to which it was devoted is consistent with profitability. *Arkansas State Highway Com. v. First Pyramid Life Ins. Co.*, 269 Ark. 278, 602 S.W.2d 609 (1980).

In an eminent domain proceeding where opinion testimony as to real estate values is based only on comparable sales, it should be stricken for want of a reasonable basis when it is shown that no sale considered by the witness was of land comparable to that involved in the trial;

however, the mere fact that a witness considers a sale that is not comparable, along with others, in arriving at his opinion as to value is not a basis for excluding his testimony. *Arkansas State Highway Com. v. First Pyramid Life Ins. Co.*, 269 Ark. 278, 602 S.W.2d 609 (1980).

**Substantial Evidence.**

Testimony of expert in appraising property that property owners had only been damaged to the extent of \$3,500 was substantial evidence of the damages suffered by property owners in the condemnation of a fraction of an acre of land on which a small house had been built, supporting a jury's verdict in the amount of \$4,000 with judgment against property owners for excessive amount deposited in the registry of the court. *Adams v. Arkansas State Hwy. Comm'n*, 235 Ark. 837, 362 S.W.2d 425 (1962).

**Withdrawals.**

Under § 27-67-317, the court may not only permit withdrawals of deposits under §§ 27-67-314 and 27-67-315, but also of the additional deposit provided under this section. *Adams v. Arkansas State Hwy. Comm'n*, 235 Ark. 808, 363 S.W.2d 134 (1962).



**Cited:** Arkansas State Hwy. Comm'n v. Taylor, 269 Ark. 458, 602 S.W.2d 657 (1980).

### **27-67-319. Appeal not to delay vesting of title.**

(a) No appeal in any cause under this subchapter, nor any bond or undertaking given therein, shall operate to prevent or delay the vesting of title to real property or any interest therein or any easement in the State of Arkansas.

(b) The State of Arkansas shall not be divested of any title to real property or any interest therein or any easement acquired under this subchapter by court except where the court finds that the property or any interest therein or any easement was not taken for public use. In the event of this finding, the court shall enter judgment as may be necessary:

(1) To compensate the persons entitled thereto for the period during which the property was in the possession of the state; and

(2) To recover for the state any deposit or funds paid to any person.

**History.** Acts 1953, No. 115, § 6; A.S.A. 1947, § 76-539.

### **27-67-320. Acquisition when county court fails to grant petition.**

(a) Where the State Highway Commission petitions any county court asking for right-of-way for any state highway and where the county court fails to grant the petition and to make court order procuring right-of-way within sixty (60) days after the petition is presented, then the commission may take such steps as it deems expedient to acquire right-of-way, either by purchase, exercise of its right of eminent domain, or otherwise.

(b) In that event, one-half ( $\frac{1}{2}$ ) of the cost of acquiring the right-of-way shall be deducted from the next payment due any county by reason of any appropriation out of the State Highway Fund or state revenue from gasoline as motor vehicle fuel or auto license tax to the county or county highway fund of the county.

(c) All suits involving the validity of this section or any portion of it shall be deemed matters of public interest and shall be advanced and disposed of at the earliest possible moment, and appeals in such suits must be taken and perfected within thirty (30) days from the date of the judgment or decree.

**History.** Acts 1929, No. 205, §§ 2, 3; Pope's Dig., §§ 6963, 6964; Acts 1941, No. 281, § 1; A.S.A. 1947, §§ 76-511, 76-512.

## CASE NOTES

## ANALYSIS

Constitutionality.

In General.

Construction.

Eminent Domain.

Filing of Petitions.

**Constitutionality.**

This section is not violative of Ark. Const., Art. 16, § 11, which provides that no money arising from a tax levied for one purpose shall be used for any other purpose, when law providing for county highway fund does not provide how it shall be expended. *Arkansas State Hwy. Comm'n v. Pulaski County*, 205 Ark. 395, 168 S.W.2d 1098 (1943).

This section is not unconstitutional as depriving a county court of its exclusive original jurisdiction over county taxes and roads, since revenue involved is a fund arising from a state tax and not a county tax. *Arkansas State Hwy. Comm'n v. Pulaski County*, 205 Ark. 395, 168 S.W.2d 1098 (1943).

**In General.**

Where the county court fails or refuses to grant the request of the State Highway Commission to condemn certain land, the commission can acquire the right-of-way by purchase, eminent domain, or otherwise and may, in such event, charge one-half the cost back to the county. *Arkansas State Hwy. Comm'n v. Palmer*, 222 Ark. 603, 261 S.W.2d 772 (1953).

**Construction.**

This section was not repealed by Acts 1934 (2nd Ex. Sess.), No. 11, which levied

a tax on motor vehicle fuel, provided for refunding of highway district obligations, and provided that portion of the tax going to the counties was to be apportioned under existing laws. *Arkansas State Hwy. Comm'n v. Pulaski County*, 205 Ark. 395, 168 S.W.2d 1098 (1943).

**Eminent Domain.**

Chancellor did not err in refusing to enjoin State Highway Commission from proceeding with petition in county court for a right-of-way where commission had abandoned case and proceeded with condemnation proceeding in circuit court. *Woollard v. State Hwy. Comm'n*, 220 Ark. 731, 249 S.W.2d 564 (1952).

**Filing of Petitions.**

Petition presented to county judge sitting in open court at the time, even though never actually delivered to the clerk's office and stamped filed, was in effect filed and presented to the court and by the court denied, authorizing State Highway Commission, more than 60 days having elapsed, to acquire a right-of-way and to withhold one-half the cost from the turn-back fund due the county. *Arkansas State Hwy. Comm'n v. Pulaski County*, 205 Ark. 395, 168 S.W.2d 1098 (1943).

**Cited:** *Arkansas State Hwy. Comm'n v. Croom*, 225 Ark. 312, 280 S.W.2d 887 (1955); *Shipley v. Crawford County*, 253 Ark. 1021, 490 S.W.2d 439 (1973); *Arkansas State Hwy. Comm'n v. Dotson*, 301 Ark. 54, 781 S.W.2d 459 (1989); *Dotson v. Madison County*, 311 Ark. 395, 844 S.W.2d 371 (1993).

**27-67-321. Sale of surplus highway property.**

(a) The State Highway Commission is empowered and authorized to:

(1) Sell and convey any surplus land or real estate or any personal property or effects procured by or coming to the commission to which the commission or any member or officer therein holds title, or to which title was taken in the name of the State of Arkansas, in the settlement and procuring of rights-of-way for state highways, when lands so procured or obtained are not necessary for highway purposes; and

(2) Sell and dispose of any real estate or other property procured or conveyed to the commission, any member or officer thereof, or to the State of Arkansas, in the settlement of any claims of the state against

contractors growing out of or pertaining to any state highway construction or maintenance contract.

(b) Before any sale of real estate or other assets shall be effective, it shall be approved by resolution of the commission in a regular meeting, or a special meeting called for that purpose.

(c) The resolution shall be entered upon a record of the commission to be kept for that purpose, and a certified copy of the resolution signed by the presiding officer of the commission shall be prima facie evidence of its passage and adoption.

(d) When the sale is approved by a resolution of the commission, then the chairman or other presiding officer of the commission is authorized to execute to the person, company, or corporation purchasing the real estate or other property, a deed conveying all the right, title, interest, and equity of the commission, the Arkansas State Highway and Transportation Department, and the State of Arkansas in and to the lands.

(e) Such deeds, when so executed, shall operate to convey to the purchaser any and all right, title, interest, and equity of the commission, the department, and the State of Arkansas in and to the lands so conveyed.

(f) All proceeds arising from such sales shall be paid into and constitute a part of the state highway funds.

**History.** Acts 1933, No. 124, §§ 1, 2; Pope's Dig., §§ 6497, 6498; A.S.A. 1947, §§ 76-226, 76-227.

#### CASE NOTES

**Cited:** *Smith v. Gray*, 300 Ark. 401, 779 S.W.2d 173 (1989).

#### **27-67-322. Reacquisition of surplus property by former owner.**

(a) The State Highway Commission is authorized to sell in the manner provided by § 27-67-321 any real or personal property, or any interest therein, which is no longer necessary or desirable for state highway purposes and has been declared by commission resolution to be surplus and for sale.

(b) The owner from whom the property was acquired or his or her heirs, successors, or assigns shall be notified in writing or by publication of the resolution and shall have the option to reacquire the property. Publication shall be in any newspaper in the county where the property is located which is authorized by law to publish legal notices.

(c)(1) When an entire parcel is declared surplus, it may be reacquired under this option by refunding the price for which it was acquired by the State Highway Commission.

(2) When only remnants or portions of the original acquisition are declared surplus, they may be so reacquired at the market value thereof at the time they are declared surplus.



(3) The market value of the remnants or portions shall be determined by three (3) competent appraisers.

(d) If the option is not exercised within sixty (60) days after due notice, the State Highway Commission may proceed to dispose of the property at public sale.

(e) When any real or personal property acquired for state highway purposes is either sold or returned to the owner from whom it was acquired and the price paid therefor is refunded, any county which participated in the cost of the acquisition of the property shall share in the amount obtained from the sale, or the amount refunded, in the proportion in which it shared in the cost of acquisition.

(f)(1) The transfer of surplus rail and other railroad track material purchased in part with federal transportation enhancement funds and granted to the State Parks, Recreation, and Travel Commission or the Department of Parks and Tourism, or both, by the State Highway Commission shall not be subject to the procedures set forth in subsections (a)-(e) of this section.

(2) Surplus rail and other track material described under this subsection may be transferred by gift or contract to a regional intermodal facilities authority, a metropolitan port authority, or a planning and development district.

(3) The purposes of this section shall be satisfied upon:

(A) The adoption of a resolution by the State Highway Commission that the transfer will promote the continuation of rail service, economic development, or industrial growth; and

(B) A transfer document executed by the State Parks, Recreation, and Travel Commission or the Department of Parks and Tourism, or both.

**History.** Acts 1953, No. 419, § 9; A.S.A. 1947, § 76-548; Acts 2007, No. 562, § 1; 2009, No. 483, § 9.

**Amendments.** The 2007 amendment added (f).

The 2009 amendment substituted "transfer" for "disposition" and substi-

tuted "in subsections (a)-(e) of this section" for "above" in (f)(1), substituted "transferred" for "disposed of" in (f)(2), and made minor stylistic changes in (f)(3).

## CASE NOTES

**Cited:** Rowley v. Arkansas State Hwy. Comm'n, 242 Ark. 419, 413 S.W.2d 876 (1967); Arkansas State Hwy. Comm'n v. Wallace, 247 Ark. 157, 444 S.W.2d 685

(1969); Arkansas State Hwy. Comm'n v. Marshall, 253 Ark. 212, 485 S.W.2d 740 (1972); Smith v. Gray, 300 Ark. 401, 779 S.W.2d 173 (1989).

## 27-67-323. Reacquisition of abandoned land by city or town.

(a) Whenever the State Highway Commission obtains title to land from any city or incorporated town in this state for state highway purposes and thereafter abandons and discontinues using the land for those purposes, the commission shall, in writing, notify the city or incorporated town that the land has been abandoned and shall offer to

reconvey the title thereof to the city or town for the same consideration that the commission had paid the city or town initially for title to such land.

(b) If the city or incorporated town, within thirty (30) days from the date of receiving the offer, accepts the offer, the commission shall reconvey title to the land to the city or incorporated town originally conveying the title to the commission, upon the payment by the city or town of the consideration initially paid by the commission for title to the land.

(c) If the city or town has not accepted the offer within the thirty-day period above provided, the commission shall proceed to dispose of the land as now provided by law.

**History.** Acts 1967, No. 394, § 1; A.S.A. 1947, § 76-552.

## CHAPTER 68

### CONTROLLED-ACCESS FACILITIES

#### SECTION.

- 27-68-101. Intent.
- 27-68-102. Definition.
- 27-68-103. Penalties.
- 27-68-104. Powers of highway authorities generally.
- 27-68-105. Design and regulation of access.
- 27-68-106. Designation and establishment of facilities.
- 27-68-107. Regulation of use.

#### SECTION.

- 27-68-108. Acquisition of property.
- 27-68-109. Agreements with other highway authorities and federal government.
- 27-68-110. Jurisdiction over service roads.
- 27-68-111. Service stations and commercial establishments prohibited.

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**Effective Dates.** Acts 1953, No. 383, § 13: Mar. 28, 1953. Emergency clause provided: "It has been found that this act is necessary for the immediate preservation of the public peace, health, and safety, and for the promotion of the general wel-

fare. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health, and safety, shall take effect and be in force from the date of its approval."

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#### 27-68-101. Intent.

The General Assembly of the State of Arkansas finds, determines, and declares that this chapter is necessary for the immediate preservation of the public peace, health, and safety and for the promotion of the general welfare.

**History.** Acts 1953, No. 383, § 1; A.S.A. 1947, § 76-2201.

## CASE NOTES

**Cited:** Arkansas State Highway Com. v. Bingham, 231 Ark. 934, 333 S.W.2d 728 (1960).

**27-68-102. Definition.**

As used in this chapter, unless the context otherwise requires, "controlled-access facility" means a highway or street especially designed for through traffic over, from, or to which owners or occupants of abutting land or other persons have no right or easement, or only a controlled right of easement of access, light, air, or view, by reason of the fact that their property abuts upon the controlled-access facility or for any other reason. These highways or streets may be freeways open to use by all customary forms of street and highway traffic or they may be parkways from which trucks, buses, and other commercial vehicles shall be excluded.

**History.** Acts 1953, No. 383, § 2; A.S.A. 1947, § 76-2202.

## CASE NOTES

## ANALYSIS

In General.  
Rights-of-Way.  
Subdivisions.

**In General.**

This section refers to, and includes, a partially controlled-access facility. *Williams v. Arkansas State Hwy. Comm'n*, 21 Ark. App. 98, 730 S.W.2d 245 (1987).

**Rights-of-Way.**

There is no conflict between this section and § 27-67-304, and the rights to use highway rights-of-way reserved in that section apply to controlled-access highways as defined in this section. *Arkansas State Hwy. Comm'n v. Arkansas Real Estate Co.*, 243 Ark. 738, 421 S.W.2d 882 (1967).

**Subdivisions.**

Sections 14-56-413 and 14-56-415 — 14-56-421 deal exclusively and comprehensively with subdivisions across the state, while § 27-68-101 et seq. addresses itself to controlled-access facilities as defined in this section; a subdivision is not a controlled-access facility, even though it may abut one, and it does not appear inconsistent, considering the separate purposes of these statutory provisions, that a developer should receive compensation for giving up a right-of-way along a controlled-access facility while having to relinquish title and control of the streets within a subdivision without being compensated. *Calabria v. City of Fayetteville*, 277 Ark. 489, 644 S.W.2d 249 (1982).

**Cited:** *Arkansas State Hwy. Comm'n v. Marshall*, 253 Ark. 212, 485 S.W.2d 740 (1972).

**27-68-103. Penalties.**

(a) It is unlawful for any person:

(1) To drive a vehicle over, upon, or across any curb, central dividing section, or other separation or dividing line on controlled-access facilities;



(2) To make a left turn or a semicircular or U-turn except through an opening provided for that purpose in the dividing curb section, separation, or line;

(3) To drive any vehicle except in the proper lane provided for that purpose and in the proper direction and to the right of the central dividing curb, separation section, or line; or

(4) To drive any vehicle into the controlled-access facility from a local service road except through an opening providing for that purpose in the dividing curb or dividing section or dividing line which separates the service road from the controlled-access facility proper.

(b) Any person who violates any of the provisions of this section shall be guilty of a misdemeanor. Upon arrest and conviction that person shall be punished by a fine of not less than five dollars (\$5.00) nor more than one hundred dollars (\$100) or by imprisonment in the city or county jail for not less than five (5) days nor more than ninety (90) days, or by both fine and imprisonment.

**History.** Acts 1953, No. 383, § 10;  
A.S.A. 1947, § 76-2210.

## **27-68-104. Powers of highway authorities generally.**

Acting alone or in cooperation with each other or with any federal, state, or local agency or any other state having authority to participate in the construction and maintenance of highways, the highway authorities of the state, counties, cities, towns, and villages are authorized to:

(1) Plan, designate, establish, regulate, vacate, alter, improve, maintain, and provide controlled-access facilities for public use whenever the authority or authorities are of the opinion that present or future traffic conditions will justify such special facilities, provided that within cities and villages, authority shall be subject to such municipal consent as may be provided by law; and

(2) Exercise, relative to controlled-access facilities, and in addition to the specific powers granted in this chapter, any and all additional authority vested in them relative to highways or streets within their respective jurisdictions.

**History.** Acts 1953, No. 383, § 3; A.S.A. 1947, § 76-2203.

## **CASE NOTES**

### **Service Roads.**

In determining amount of compensation due to landowners whose property was condemned for a service road along a controlled-access highway, this chapter governing controlled-access facilities, and not §§ 14-56-413 and 14-56-415 — 14-56-421, governing control of subdivisions by

cities and towns, was applicable. Accordingly, a city ordinance requiring the owner and developer of land abutting a controlled-access highway to construct a service road at this own expense and dedicate it to the city was in conflict with the controlling statutes and would constitute a taking of private property without due

process in violation of Ark. Const., Art. 2, § 22. *Calabria v. City of Fayetteville*, 277 Ark. 489, 644 S.W.2d 249 (1982).

**Cited:** *Arkansas State Hwy. Comm'n v. Alcott*, 260 Ark. 225, 539 S.W.2d 432 (1976).

### **27-68-105. Design and regulation of access.**

(a) The highway authorities of the state, counties, cities, towns, and villages are authorized to so design any controlled-access facility and to so regulate, restrict, or prohibit access as to best serve the traffic for which such facility is intended.

(b) In this connection, highway authorities are authorized to divide and separate the controlled-access facilities into separate roadways by the construction of raised curbsings, central dividing sections, or other physical separations or by designating separate roadways by signs, markers, stripes, and the proper lane for traffic by appropriate signs, markers, stripes, and other devices.

(c) No person shall have any right of ingress or egress to, from, or across controlled-access facilities to or from abutting lands, except at designated points at which access may be permitted, upon such terms and conditions as may be specified from time to time.

**History.** Acts 1953, No. 383, § 4; A.S.A. 1947, § 76-2204.

### **CASE NOTES**

**Cited:** *Arkansas State Hwy. Comm'n v. Marshall*, 253 Ark. 212, 485 S.W.2d 740 (1972).

### **27-68-106. Designation and establishment of facilities.**

(a) The highway authorities of the state, counties, cities, towns, or villages may designate and establish controlled-access highways as new and additional facilities or may designate and establish an existing street or highway as included within a controlled-access facility.

(b) The state or any of its subdivisions shall have authority to provide for the elimination of intersections at grade of controlled-access facilities with existing state and county roads, and city or town or village streets, by separation or service road, or by closing off the roads and streets at the right-of-way boundary line of such controlled-access facility.

(c) After the establishment of any controlled-access facility, no highway or street which is not a part of the facility shall intersect it at grade.

(d) No city, town, or village street, county or state highway, or other public way shall be opened into or connected with any controlled-access facility without the consent and previous approval of the highway authority in the state, county, city, town, or village having jurisdiction over the controlled-access facility. Consent and approval shall be given only if the public interest shall be served thereby.

**History.** Acts 1953, No. 383, § 7; A.S.A. 1947, § 76-2207.

#### CASE NOTES

**Cited:** Earl v. Arkansas State Hwy. Comm'n, 241 Ark. 11, 405 S.W.2d 931 (1966).

### 27-68-107. Regulation of use.

The highway authorities of the state, counties, cities, villages, and towns may regulate, restrict, or prohibit the use of controlled-access facilities by the various classes of vehicles or traffic in a manner consistent with § 27-68-102.

**History.** Acts 1953, No. 383, § 3; A.S.A. 1947, § 76-2203.

#### CASE NOTES

#### Subdivisions.

Sections 14-56-413 and 14-56-415 — 14-56-421 deal exclusively and comprehensively with subdivisions across the state, while § 27-68-101 et seq. addresses itself to controlled-access facilities as defined in § 27-68-102; a subdivision is not a controlled-access facility, even though it may abut one, and it does not appear inconsistent, considering the separate purposes of these statutory provisions,

that a developer should receive compensation for giving up a right-of-way along a controlled-access facility while having to relinquish title and control of the streets within a subdivision without being compensated. *Calabria v. City of Fayetteville*, 277 Ark. 489, 644 S.W.2d 249 (1982).

**Cited:** Arkansas State Hwy. Comm'n v. Alcott, 260 Ark. 225, 539 S.W.2d 432 (1976).

### 27-68-108. Acquisition of property.

(a) The highway authorities of the state, counties, cities, towns, or villages may acquire private or public property and property rights for controlled-access facilities and service roads, including rights of access, air, view, and light. The property and property rights may be acquired by gift, devise, purchase, or condemnation in the same manner as the units are authorized by law to acquire property or property rights in connection with highways and streets within their respective jurisdictions.

(b) All property rights acquired under the provisions of this chapter shall be in fee simple.

(c) In connection with the acquisition of property or property rights for any controlled-access facility or portion thereof, or service road in connection therewith, the state, county, city, town, or village highway authority may, in its discretion, acquire an entire lot, block, or tract of land if by so doing the interests of the public will be best served, even though the entire lot, block, or tract is not immediately needed for the right-of-way proper.



(d) Court proceedings necessary to acquire property or property rights for purposes of this chapter shall take precedence over all other causes not involving the public interest to the end that the provision of controlled-access facilities may be expedited.

**History.** Acts 1953, No. 383, §§ 5, 6; A.S.A. 1947, §§ 76-2205, 76-2206.

## CASE NOTES

### ANALYSIS

Cost of Restoring Property.  
Elements of Damage.  
Police Power.  
Service Roads.  
Subdivisions.

#### **Cost of Restoring Property.**

In condemnation proceedings, cost of restoring remaining property most nearly to its original status is admissible not as a measure of damages but as an aid in determining the before and after value of the property. *Arkansas State Hwy. Comm'n v. Speck*, 230 Ark. 712, 324 S.W.2d 796 (1959).

#### **Elements of Damage.**

In an eminent domain proceeding by the State Highway Commission seeking to condemn the necessary property rights to enable it to convert an existing highway across farm lands into a controlled-access facility, landowner's inability to cross the highway was a compensable element of damage, and such right to cross the public easement was not within the issues of the condemnation proceedings had some 10 years prior. *Arkansas State Hwy. Comm'n v. Union Planters Nat'l Bank*, 231 Ark. 907, 333 S.W.2d 904 (1960).

#### **Police Power.**

This section does not authorize highway authorities to acquire property rights by the exercise of police power. *Arkansas State Highway Com. v. Arkansas Power & Light Co.*, 231 Ark. 307, 330 S.W.2d 77 (1959).

An existing easement cannot be enlarged to a fee by means of a mere police regulation, and there is no good reason to suppose that the General Assembly meant to divide the transaction into two steps — one involving the police power and the other the power of eminent domain;

rather, the State Highway Commission will be compelled to condemn a new right-of-way. *Arkansas State Hwy. Comm'n v. Union Planters Nat'l Bank*, 231 Ark. 907, 333 S.W.2d 904 (1960).

#### **Service Roads.**

In determining amount of compensation due to landowners whose property was condemned for a service road along a controlled-access highway, § 27-68-101 et seq., governing controlled-access facilities, and not §§ 14-56-413 and 14-56-415 — 14-56-421, governing control of subdivisions by cities and towns, was applicable. Accordingly, a city ordinance requiring the owner and developer of land abutting a controlled-access highway to construct a service road at his own expense and dedicate it to the city was in conflict with the controlling statutes and would constitute a taking of private property without due process in violation of Ark. Const., Art. 2, § 22. *Calabria v. City of Fayetteville*, 277 Ark. 489, 644 S.W.2d 249 (1982).

#### **Subdivisions.**

Sections 14-56-413 and 14-56-415 — 14-56-421 deal exclusively and comprehensively with subdivisions across the state, while § 27-68-101 et seq. addresses itself to controlled-access facilities as defined in § 27-68-102; a subdivision is not a controlled-access facility, even though it may abut one, and it does not appear inconsistent, considering the separate purposes of these statutory provisions, that a developer should receive compensation for giving up a right-of-way along a controlled-access facility while having to relinquish title and control of the streets within a subdivision without being compensated. *Calabria v. City of Fayetteville*, 277 Ark. 489, 644 S.W.2d 249 (1982).

**Cited:** *Arkansas State Highway Com. v. Arkansas Power & Light Co.*, 231 Ark. 307, 330 S.W.2d 77 (1959).

**27-68-109. Agreements with other highway authorities and federal government.**

The highway authorities of the state, cities, counties, towns, or villages are authorized to enter into agreements with each other or with the federal government respecting the financing, planning, establishment, improvement, maintenance, use, regulation, or vacation of controlled-access facilities or other public ways in their respective jurisdictions, to facilitate the purposes of this chapter.

**History.** Acts 1953, No. 383, § 8; A.S.A. 1947, § 76-2208.

**27-68-110. Jurisdiction over service roads.**

(a) In connection with the development of any controlled-access facility, the state, county, city, town, or village highway authorities are authorized to plan, designate, establish, use, regulate, alter, improve, maintain, and vacate local service roads and streets or to designate as local service roads and streets any existing road or street and to exercise jurisdiction over service roads in the same manner as authorized over controlled-access facilities under the terms of this chapter, if, in their opinion, local service roads and streets are necessary or desirable.

(b) Local service roads or streets shall be of appropriate design and shall be separated from the controlled-access facility property by means of all devices designated as necessary or desirable by the proper authority.

**History.** Acts 1953, No. 383, § 9; A.S.A. 1947, § 76-2209.

**CASE NOTES****Compensation.**

In determining amount of compensation due to landowners whose property was condemned for a service road along a controlled-access highway, § 27-68-101 et seq., governing controlled-access facilities, and not §§ 14-56-413 and 14-56-415 — 14-56-421, governing control of subdivisions by cities and towns, was applicable. Accordingly, a city ordinance requir-

ing the owner and developer of land abutting a controlled-access highway to construct a service road at his own expense and dedicate it to the city was in conflict with the controlling statutes and would constitute a taking of private property without due process in violation of Ark. Const., Art. 2, § 22. *Calabria v. City of Fayetteville*, 277 Ark. 489, 644 S.W.2d 249 (1982).

**27-68-111. Service stations and commercial establishments prohibited.**

No automotive service station or other commercial establishment for serving motor vehicle users shall be constructed or located within the right-of-way of or on publicly owned or publicly leased land acquired or used for or in connection with a controlled-access highway facility.



**History.** Acts 1959, No. 123, § 1; A.S.A. 1947, § 76-2211.

## CHAPTER 69

### MISSISSIPPI RIVER PARKWAY (GREAT RIVER ROAD)

#### SUBCHAPTER.

1. ESTABLISHMENT AND REGULATION.
2. MISSISSIPPI RIVER PARKWAY COMMISSION OF ARKANSAS.

#### SUBCHAPTER 1 — ESTABLISHMENT AND REGULATION

##### SECTION.

- 27-69-101. Definitions.
- 27-69-102. Department acquisition of land and conveyance to the United States.
- 27-69-103. State agency authorization to cooperate in conveyances.
- 27-69-104. Powers and duties of state agencies.

##### SECTION.

- 27-69-105. State acquisition procedure.
- 27-69-106. Right-of-way.
- 27-69-107. Use of existing or projected highways.
- 27-69-108. Alternate routes.
- 27-69-109. Concurrent jurisdiction — Reserved powers and jurisdiction.

**Preambles.** Acts 1939, No. 45 contained a preamble which read: "(a) Whereas, this State desires to avail itself of the benefits of an act introduced in the 1939 Congress of the United States establishing and authorizing a survey for a national Mississippi River Parkway from its source to its mouth, a portion of which as a rural trunk parkway, will also serve as a "market to farm" route and for tourists, it is anticipated, will be located in this State; and

"(b) Whereas, interstate north and south travel-trade from the ten States bordering on the Mississippi River, containing approximately thirty million people constituting one-fourth of the population of the nation with over five million passenger automobiles, is continually increasing due to greater industrial leisure and tourist attractions; and

"(c) Whereas, this State will benefit from the added facility and motor vehicle park road for use of its citizens and tourists to this State and from the gasoline tax and other income from increased 'travel-trade' through the State; and

"(d) Whereas, the demands and needs for a national park and rural trunk parkway through the Mississippi Valley with connections for future branch tributary

valley parkways and public areas for recreational purposes as a part of the nationwide parkway system, justify the authorization of this particular parkway as timely; and

"(e) Whereas, such authorization by the General Assembly is desirable now in order that this State and political subdivisions, associations and citizens thereof, may plan for and procure public areas and historic sites en route while same may be readily available; and to provide creative employment of everlasting value; and

"(f) Whereas, Act No. 770½ approved June 23, 1936, and modified to apply to this State, authorized the Secretary of the Interior through the National Park Service to make comprehensive study with this State with a view toward developing a coordinated adequate public park, parkway and recreational area plan and program for the people of this State; and

"(g) Whereas, this State bordering the Mississippi River through its respective park, planning and highway agencies, has cooperated with the National Park Service and the National Resources Committee in developing a natural resource program and plan for a 'Mississippi River Parkway' from its source to the mouth; and



“(h) Whereas, increased leisure necessitates increased recreation and conservation facilities along the great waterway; and

“(i) Whereas, pending the enactment by the State of adequate enabling legislation, general Federal surveys, plans and estimates for parkway may proceed, but no Federal funds shall be expended for

parkway road construction within this State through which a portion of the parkway is to be located; and

“(j) Whereas, this State as a Federal requirement must furnish the parkway lands to the Federal Government and bear the expense of acquisition therefor;

“Now, therefore....”

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## 27-69-101. Definitions.

As used in this chapter, unless the context otherwise requires:

(1) “Parkway” means and includes parkway areas of varying widths principally through rural areas with sightly, landscape, scenic, safety, and wayside development grants and easements, with minimum frontage and private access rights, featuring a parkway road designed primarily for passenger car traffic and specifically adapted to leisurely travel as a tourway for outdoor recreation and market-to-farm use by tourists, including service and recreational facilities and the preservation of scenic, historic, and scientific features;

(2) “Scenic, landscape, sightly, or safety easement” shall mean a servitude devised to permit land to remain in private ownership for its normal agricultural, residential, or other use consistent with parkway purposes determined by the Secretary and at the same time placing a control over the future use of the area to maintain its scenic, landscape, sightly, or safety values for the parkway in this state; and

(3) “Secretary” means the United States Secretary of the Interior;

**History.** Acts 1939, No. 45, § 4; A.S.A. 1947, § 76-1804.

## 27-69-102. Department acquisition of land and conveyance to the United States.

(a) The Arkansas State Highway and Transportation Department is designated, authorized, and directed as the state agency of this state to acquire by gift, purchase, or condemnation as a public highway and convey to the United States all parkway lands and easements as and when required by surveys and maps hereafter approved by the Secretary of the Interior.

(b) If, as a result of required surveys, maps, and estimates, the United States Secretary of the Interior shall be satisfied that one (1) or more desirable parkway routes are available and the President shall approve thereof, then the department may accept donations of and acquire lands, interests in lands, islands, waters, easements, and other properties bordering the Mississippi River. Thereafter the department may convey them to the United States on behalf of this state or of its political subdivisions. Private parties may convey necessary or conve-

nient properties or easements for the projected parkway, together with sites in connection therewith acquired or to be acquired for recreational or naturalistic purposes.

(c) Thereafter, the areas together with the parkway right-of-way of a width sufficient to include the road and all bridges, ditches, cuts, and fills appurtenant thereto shall constitute the national parkway in this state.

**History.** Acts 1939, No. 45, §§ 1, 3;  
A.S.A. 1947, §§ 76-1801, 76-1803.

### **27-69-103. State agency authorization to cooperate in conveyances.**

State agencies owning or controlling various state-owned areas or state-owned easements or interest therein of state agencies are authorized to cooperate in the conveyance of the lands, easements, or interest to and in favor of the United States for this national parkway.

**History.** Acts 1939, No. 45, § 2; A.S.A.  
1947, § 76-1802.

### **27-69-104. Powers and duties of state agencies.**

The Arkansas State Highway and Transportation Department or other departments of the state are authorized to:

(1) Acquire and convey to the United States parkway areas in accordance with the provisions of this subchapter;

(2) Allocate necessary funds when appropriations are available therefor for the acquisition of parkway areas and for other purposes outlined below as and when needed;

(3) Arrange for or rearrange fencing, cattle passes, or piping water supply to adjoining landowners; change overhead wires; construct underground wire and pipe crossings; reconstruct public and private roads; make surveys, and prepare land maps and conduct condemnation suits, all without cost to the United States;

(4) Exercise the right of eminent domain to appropriate and condemn land or waters of sufficient width to conform to the requirements of this subchapter and to convey them to the United States for parkway, easement, recreation, or conservation purposes with title to the land vesting in the state upon institution of such proceedings; and to acquire by fee simple areas, scenic and other easements and areas requested for revetments, quarries, gravel, dredging, and borrow pits found necessary for parkway construction;

(5) Have its representatives and those of the United States enter upon private lands for the purpose of making surveys; to hold the United States free and harmless from claims arising from the surveys, development, construction, maintenance, and operation of the parkway undertaken by the United States on such property; and to protect parkway areas by state authority after acquisition by the state and

acceptance by the Secretary until such time prior or subsequent to construction as the condemnee shall have received full compensation therefor from the state;

(6) Provide for the relocation or abandonment of sections of local, public, and private roads, or of railroads by agreement therewith, on parkway land as may be necessitated by the design and construction of the parkway when such relocation or abandonment does not interfere with flood control projects or rulings of the Arkansas Public Service Commission;

(7) Convey all or portions of state-owned areas and state-owned easements to the United States of sufficient amount to conform to the requirements of this subchapter when the parkway extends through state-owned areas or absorbs state-owned easements;

(8) Assume indebtedness or secure releases therefrom through irrigation, flood control, drainage, or other political districts or subdivisions wherever outstanding indebtedness exists therein;

(9) Provide for the concurrent jurisdiction of this state over the parkway areas after title thereto becomes vested in the United States;

(10) Permit, as soon as the route of the parkway shall be determined, the immediate payment of premiums on standing timber, pending final purchase in order to discourage timber cutting by owners during the negotiation period or the execution of leases in advance of possession, satisfactory to the Secretary;

(11) Permit the elimination of existing and the denial of new frontage or access rights to the parkway motor vehicle road and on parkway land to landowners whose land abuts the parkway land by one (1) or more of the following remedies: purchase of residual tracts, acquisition by excess condemnation, provision of other means of access to public highways, acquisition of private rights-of-way, or adjustment of damages;

(12) Require the elimination of stock grazing on parkway land or the unrestricted use therefor of such land by adjacent landowners;

(13) Undertake preliminary surveys and preparation of topographical plats of the flagged locations of the parkway road for the purpose of aiding the federal engineers in determining the final location of the parkway road and right-of-way boundaries; and

(14) Construct, relocate, or abandon any local, public, or service road, crossing or parallel to the parkway road on parkway land, when requested by the Secretary.

**History.** Acts 1939, No. 45, §§ 6, 11;  
A.S.A. 1947, §§ 76-1806, 76-1811.

## **27-69-105. State acquisition procedure.**

(a) Directly or indirectly from or through its political subdivisions, this state shall acquire and convey to the United States the necessary areas in fee simple, together with landscape, sightly, safety, or scenic easements, and rights-of-way for connections to the approaches of



trans-Mississippi River bridges, subject to such flowage, revetment, bank protection, levee, or other river control, harbor line, and navigation reservations or rights as the Secretary of Defense may determine are essential for navigation or flood control purposes.

(b) The titles and evidences of titles to areas so acquired, for protection to the United States in case of use or occupancy thereof, shall be satisfactory to the Secretary.

(c) Deeds shall be accompanied by land maps, survey notes, and closure sheets.

(d) Parkway areas as acquired by this state and scenic, landscape, sightly, or safety easements on additional areas shall be in accordance with preliminary development and property maps submitted to the state by the United States Secretary of the Interior.

(e) State agencies and interstate or intrastate utilities having fiscal or other interests in any properties may join in or execute releases for parkway areas or easements.

(f) Parkway area acquisition shall be undertaken in units of sufficient length to justify placing the units under contract for construction of the parkway road as soon as acquired by the state and accepted by the Secretary.

**History.** Acts 1939, No. 45, §§ 6, 7;  
A.S.A. 1947, §§ 76-1806, 76-1807.

### **27-69-106. Right-of-way.**

(a) An average right-of-way of not less than one hundred (100) acres per mile in fee simple, plus scenic, landscape, sightly, or safety easement control up to a total average of fifty (50) acres per mile, shall be provided for the gross length of the parkway in this state for parkway purposes.

(b) At no point shall the width of parkway area through state or private lands be less than two hundred feet (200'), except as the Secretary may determine in particular cases.

(c) If the total acreage acquired by this state and its political subdivisions or other parties and transferred to the United States for parkway purposes is less than the above stated minimum per mile, then other public areas adjacent to or near the parkway having scenic, recreational, conservation, floodway, or historic value shall be owned, acquired, or administered satisfactorily to the Secretary or leased thereto sufficient to bring the total acreage up to the minimum.

(d) The area boundaries need not be mechanically determined or measured by a uniform distance from the center line of the parkway.

(e) The variation of the width shall be dependent upon the topographical and other natural conditions, requirements of design, easements, and time and cost of acquisition.

(f) Owing to proximity in numerous locations of vertical picturesque bluffs close to the Mississippi River at high water stages and the narrow range of location of existing railway facilities, the parkway road may be

constructed over or under such precipitous cliffs and caverns and around and across river bends and through back country as will best diversify the rugged, wooded, and open pastoral scenery and water vistas, and also tend toward economical cost of land acquisitions and parkway road construction and maintenance.

(g) The state may include in its fee simple parkway right-of-way requirement such nearby areas of the Mississippi River within its boundaries, other than the navigable channel thereof at normal river stage, provided the nearest edge of such supplementary water, island, flo-way, or floodway areas shall be within five hundred feet (500') of the center line of the parkway road and shall not exceed a width of one thousand feet (1,000').

**History.** Acts 1939, No. 45, § 5; A.S.A. 1947, § 76-1805.

### **27-69-107. Use of existing or projected highways.**

(a) When the construction of sections of the parkway road parallel to existing highways will result in unnecessary expense and the Secretary may, in his discretion, use existing or projected sections of streets or highways, bridges, parks, or other areas as connecting links between other sections of this parkway, and federal funds may be expended for parkway purposes thereon under the provisions of this subchapter, no parkway area credits need be allowed the state.

(b) In the event it is determined that the connecting links of highways should provide for other than passenger car traffic, a cooperative agreement with respect to use and the reconstruction, maintenance, and control thereof may be entered into by the Secretary with the Arkansas State Highway and Transportation Department or local public authorities concerned.

**History.** Acts 1939, No. 45, § 8; A.S.A. 1947, § 76-1808.

### **27-69-108. Alternate routes.**

Alternate routes through or around urban areas, along scenic country, or connecting historic sites may be provided or required for acceptance by the Secretary for parkway purposes.

**History.** Acts 1939, No. 45, § 8; A.S.A. 1947, § 76-1808.

### **27-69-109. Concurrent jurisdiction — Reserved powers and jurisdiction.**

(a) This state cedes to the United States and current jurisdiction to so regulate that the United States shall exercise concurrent jurisdiction:

(1) To regulate use of parkway areas and traffic on the parkway road and protect the areas and property thereon belonging to the United States from damage, depredation, or destruction;

(2) To operate and administer the areas and property of the United States embraced in the parkway as a national parkway, when consistent with the current uses of other federal departments through whose areas the parkway extends; and

(3) To prosecute in the federal courts any violation of parkway regulations.

(b) There is preserved to this state or its political subdivisions thereof in which parkway areas are located:

(1) All other powers and expressly and specifically reserves thereto jurisdiction in all civil and criminal matters;

(2) The power to levy and collect a tax on all motor vehicle fuels and lubricants on the parkway and a tax on the sale thereof and of other products and services sold on the parkway, or on any part of the property conveyed to the United States pursuant to this subchapter, except sales to and for exclusive use of the federal government;

(3) The jurisdiction and power to tax and license or to prohibit the sale of intoxicating liquors on any areas so conveyed, or to be conveyed;

(4) The right to levy and collect a tax on all property, including buildings erected thereon, not belonging to the United States; and

(5) The authority to require licenses and impose license taxes upon any business or businesses conducted thereon under lease with the United States.

(c) The above powers enumerated as expressly and specifically reserved to this state or political subdivisions thereof, in which parkway areas are situated, shall not be construed as being in any respect inconsistent with or impairing the powers of the United States.

(d) By mutual agreement between federal and state or local authorities, their respective patrolmen may cooperate in the enforcement of parkway regulations and controlling parades or convoys on the parkway road.

**History.** Acts 1939, No. 45, §§ 9, 10; A.S.A. 1947, §§ 76-1809, 76-1810. words are missing in the beginning of subsection (a) of this section; the section is printed as enacted.

**Publisher's Notes.** Apparently some

SUBCHAPTER 2 — MISSISSIPPI RIVER PARKWAY COMMISSION OF ARKANSAS

SECTION.  
27-69-201. Creation.  
27-69-202. Members.  
27-69-203. Organization and meetings.  
27-69-204. National affiliation — Advisory capacity.

SECTION.  
27-69-205. Advisors and assistants.  
27-69-206. Standard road signs.  
27-69-207. Funds.



**Preambles.** Acts 1961, No. 148 contained a preamble which read: "Whereas, the State of Arkansas has a vital interest, esthetic and economic, in the development of the Arkansas segment of the Great River Road, otherwise known as the Mississippi River Parkway, running through the ten states along the Mississippi River between Canada and the Gulf of Mexico; and

"Whereas, in the furtherance of this interest the 52nd General Assembly enacted enabling legislation for this purpose in Act 45, approved February 6, 1939; and

"Whereas, the 83rd Congress of the United States authorized the expenditure of Federal-Aid funds in the Federal-Aid Highway Act of 1954 to expedite the planning and coordination of the Great River Road on a matching basis; and

"Whereas, this program has advanced to the stage where the Arkansas State Highway Commission in June 1959 requested the Bureau of Public Roads, U. S. Department of Commerce, to recommend a route for the Great River Road (Mississippi River Parkway) through the State of Arkansas; and

"Whereas, a study has been completed by the Bureau of Public Roads in cooperation with the National Park Service and was submitted December 31, 1959, to the Bureau of Public Roads, Washington, D.C., on a recommended route for the Arkansas segment of the Great River Road (Mississippi River Parkway); and

"Whereas, in 1952 the Mississippi River Parkway Planning Commission, appointed by the Governors of the ten Mississippi River States, adopted the Federal-Aid Parkway Plan for the project, submitted to the Congress in accordance with an Act of August 1949 by the Bureau of Public Roads and the National Park Service; and

"Whereas, Arkansas, as a member of this Commission, is required to pay an annual fee of one thousand dollars (\$1,000.00) for their equal share of the planning program of this Commission; and

"Whereas, the State of Arkansas is now two years in arrears on these fees;

"Now, therefore...."

**Effective Dates.** Acts 1975, No. 496, § 8: July 1, 1975. Emergency clause provided: "It is hereby found and determined by the Seventieth General Assembly that

the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1975 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1975 could work irreparable harm upon the proper administration and providing of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1975."

Acts 1981, No. 892, § 3: Mar. 28, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that the per diem of twenty-five dollars (\$25.00) per day currently provided for members of the Mississippi River Parkway Commission is inadequate to reimburse members of the Commission for expenses incurred in attending meetings of the Commission; that this Act is designed to increase the per diem of members of the Commission to enable them to more effectively and efficiently carry out their duties and responsibilities. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1983, No. 20, § 3: Feb. 3, 1983. Emergency clause provided: "It is hereby found and determined by the General Assembly that persons who have rendered long and dedicated service on the Mississippi River Parkway Commission have gained considerable knowledge and experience which is a vital asset to the functioning of said Commission, and that the immediate passage of this Act is necessary to authorize the 'Commissioner Emeritus' status for any past, present, or future member of said Commission who served for a period of twenty or more years, to authorize said person to continue to serve as a 'Commissioner Emeritus' on said Commission, thereby gaining the benefits of the experience and knowledge of said person in the continued work of said Commission. Therefore, an emergency is

hereby declared to exist and this Act, being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

Acts 1985, No. 522, § 3: Mar. 25, 1985. Emergency clause provided: "It is hereby found and determined by the General Assembly that the per diem of forty-five dollars (\$45.00) per day currently provided for members of the Mississippi River Parkway Commission is inadequate to reimburse members of the Commission for expenses incurred in attending meetings of the Commission; that this Act is designed to increase the per diem of members of the Commission to enable them to more effectively and efficiently carry out their duties and responsibilities and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 250, § 258: Feb. 24, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

### **27-69-201. Creation.**

There is created and established a commission to be known as the "Mississippi River Parkway Commission of Arkansas".

**History.** Acts 1961, No. 151, § 1; A.S.A. 1947, § 76-1812.

### **27-69-202. Members.**

(a)(1) The Mississippi River Parkway Commission of Arkansas shall be composed of ten (10) members appointed by the Governor:

- (A) One (1) member shall be a resident of Mississippi County;
- (B) One (1) member shall be a resident of Crittenden County;
- (C) One (1) member shall be a resident of St. Francis County;
- (D) One (1) member shall be a resident of Lee County;
- (E) One (1) member shall be a resident of Phillips County;
- (F) One (1) member shall be a resident of Monroe County;
- (G) One (1) member shall be a resident of Arkansas County;
- (H) One (1) member shall be a resident of Desha County;
- (I) One (1) member shall be a resident of Drew County; and
- (J) One (1) member shall be a resident of Chicot County.

(2) All members shall be appointed for terms of five (5) years.

(b)(1) Any person who has served, is now serving, or serves in the future as a member of the Mississippi River Parkway Commission of Arkansas, as established by this subchapter, who has served or serves



twenty (20) years as a member of the Mississippi River Parkway Commission of Arkansas, and as pilot or president of the Mississippi River Parkway Commission, shall, from and after February 3, 1983, be known and designated as a "commissioner emeritus".

(2) A commissioner emeritus shall serve as a member of the Mississippi River Parkway Commission of Arkansas for the remainder of his or her life and shall be notified of all Mississippi River Parkway Commission of Arkansas meetings and is entitled to the same expenses and other allowances for attending Mississippi River Parkway Commission of Arkansas meetings as is provided by law for other Mississippi River Parkway Commission of Arkansas members.

(3) The Governor of the State of Arkansas shall cause an appropriate commission to be prepared and issued to each commissioner emeritus of the Mississippi River Parkway Commission of Arkansas, who shall file it with the Secretary of State and take the official oath of office before entering upon his or her duties as a commissioner emeritus of the Mississippi River Parkway Commission of Arkansas.

(c) Immediately upon making any appointment to the Mississippi River Parkway Commission of Arkansas, the Governor making the appointment shall notify the Mississippi River Parkway Planning Commission, hereinafter called the national commission, giving the names and addresses of the member or members so appointed.

(d)(1) Members of the Mississippi River Parkway Commission of Arkansas shall not receive compensation for their services but may receive expense reimbursement as provided in § 25-16-901 et seq.

(2) These expenses shall be paid upon claims for reimbursement approved by the chair of the Mississippi River Parkway Commission of Arkansas.

**History.** Acts 1961, No. 151, §§ 2, 6; 1963, No. 197, § 1; 1975, No. 496, § 6; 1981, No. 892, § 1; 1983, No. 20, § 1; 1985, No. 522, § 1; A.S.A. 1947, §§ 5-907.5, 76-1813, 76-1813.1, 76-1817; Acts 1995, No. 1296, § 98; 1997, No. 250, § 247.

**Publisher's Notes.** The terms of the members of the Mississippi River Parkway Commission are arranged so that two terms expire every year.

### **27-69-203. Organization and meetings.**

(a) At the first meeting of the Mississippi River Parkway Commission and annually thereafter, the members shall select a Chair of the Mississippi River Parkway Commission and a secretary from the membership.

(b) Meetings of the commission shall be called by motion of the chair or on request of any five (5) members.

(c) Except in the case of an emergency, notice of the time and place of each meeting shall be given to each member at least five (5) days prior to the date of the meeting.

(d) Every meeting of the commission shall be held at some suitable place in one of the ten (10) counties in which the Great River Road is



situated, except that any meeting may be held at any other suitable place upon majority vote of the members of the commission.

(e) Any four (4) members of the commission shall constitute a quorum for the purpose of transacting any business of the commission.

**History.** Acts 1961, No. 151, § 3; A.S.A. 1947, § 76-1814.

#### **27-69-204. National affiliation — Advisory capacity.**

(a) The Mississippi River Parkway Commission created herein shall be an affiliate of the National Mississippi River Parkway Planning Commission and shall cooperate with and assist the national commission in promoting interest in, and the development and use of, the Great River Road as designated by the Federal Bureau of Roads. It shall also serve in an advisory capacity to the Arkansas State Highway and Transportation Department in regard to the exercise of the powers and duties granted the department by § 27-69-101 et seq.

(b) The Chair of the Mississippi River Parkway Commission shall be the Arkansas representative on the national commission.

**History.** Acts 1961, No. 151, § 4; A.S.A. 1947, § 76-1815.

#### **27-69-205. Advisors and assistants.**

The Director of State Highways and Transportation shall designate one (1) employee of the Arkansas State Highway and Transportation Department who is an engineer or who has engineering experience, and the Director of the Department of Parks and Tourism shall appoint one (1) member of his or her staff, who shall advise and assist the Mississippi River Parkway Commission in carrying out its functions and duties under this subchapter.

**History.** Acts 1961, No. 151, § 5; A.S.A. 1947, § 76-1816.

#### **27-69-206. Standard road signs.**

(a) The State Highway Commission is authorized and directed to erect and maintain signs designating the route of the Great River Road through Arkansas.

(b) The signs used to designate the route shall be the standard marker developed and approved for the Great River Road by the national commission.

**History.** Acts 1961, No. 151, § 7; A.S.A. 1947, § 76-1818.

**27-69-207. Funds.**

(a) The State Highway Commission is authorized to:

(1) Expend from its regular appropriation for any fiscal year, in addition to the other purposes enumerated in the appropriation act, funds to cover the state's pro rata share, as a participating member, of the costs in the activities and work of the Mississippi River Parkway Planning Commission; and

(2) Match any federal-aid apportionment for the planning and coordination of the Great River Road, also called the Mississippi River Parkway.

(b) The authorizations made for expenditures from the State Highway and Transportation Department Fund in subsection (a) of this section shall be made by the State Highway Commission as it deems in the best interests of the State of Arkansas and shall be limited to expenditures not exceeding seven thousand five hundred dollars (\$7,500) for fees, dues, and other expenses during any one (1) fiscal year.

**History.** Acts 1961, No. 148, §§ 1, 2; 1965, No. 300, § 1; A.S.A. 1947, §§ 76-1819, 76-1820.

## CHAPTER 70

### HIGHWAY REVENUE DISTRIBUTION

#### SUBCHAPTER.

1. GENERAL PROVISIONS.
2. ARKANSAS HIGHWAY REVENUE DISTRIBUTION LAW.
3. REGIONAL MOBILITY AUTHORITY ACT. [REPEALED.]

#### SUBCHAPTER 1 — GENERAL PROVISIONS

##### SECTION.

- 27-70-101. Certification of vouchers, etc.  
 27-70-102. Certification of amounts due  
                   — Distribution.  
 27-70-103. State Highway Special Construction Account.

##### SECTION.

- 27-70-104. Federal excise tax on motor fuels.

**Publisher's Notes.** Acts 1975, No. 610, § 3, provided that the act was contingent upon and should take effect immediately upon any action of the Congress of the United States which would offer the State of Arkansas an opportunity to collect all or any part of the existing excise tax on motor fuels then imposed by United States Code, Title 26, Internal Revenue Code, Chapter 31 — Retailers Excise Tax, Sections 4041 and 4081.

**Effective Dates.** Acts 1973, No. 445, § 26; July 1, 1973. Emergency clause provided: "It is hereby found and determined by the General Assembly that immediate steps must be taken to provide additional State funds, and to allocate federal revenue sharing funds, for the construction of State highways which are essential to the public health, safety, and welfare and that the immediate passage of this Act is necessary in order that fiscal officials of the

State may make plans to prepare for the collection of additional highway revenues effective from and after July 1, 1973. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after July 1, 1973."

Acts 1975, No. 610, § 6: effective contingent on any act of U.S. Congress offering Arkansas opportunity to collect all or part of motor fuels excise tax imposed by 26 U.S.C. §§ 4041, 4081. Emergency clause provided: "It is hereby found by the General Assembly of the State of Arkansas that should the Congress of the United States reduce the amount of excise tax imposed by United States Code, Title 26, Chapter 31, §§ 4041 and 4081, entitled Retailers Excise Tax that the State of Arkansas would lose needed revenues for highway construction and maintenance for the highways of the State of Arkansas. Therefore, an emergency is hereby declared to exist. This Act being necessary for the immediate preservation of public peace, health and safety and shall take effect and be in full force and effect from the date of its approval." Approved Mar. 28, 1975.

Acts 1981, No. 719, § 3: Mar. 25, 1981. Emergency clause provided: "It is hereby found by the General Assembly of the State of Arkansas that should the Congress of the United States increase the amount of excise tax imposed by United States Code, Title 26, Chapter 31, §§ 4041 and 4081, entitled Retailers Excise Tax, the State of Arkansas would lose needed revenues for highway construction and maintenance for the highways of the State of Arkansas. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health and

safety shall take effect and be in full force and effect from the date of its approval."

Acts 1987, No. 742, § 25: July 1, 1987. Emergency clause provided: "It is hereby found and determined by the Seventy-Sixth General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1987 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1987 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full and effect from and after July 1, 1987."

Acts 1991, No. 872, § 27: July 1, 1991. Emergency clause provided: "It is hereby found and determined by the Seventy-Eighth General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1991 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1991 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1991."

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### 27-70-101. Certification of vouchers, etc.

(a) The designated disbursing officers for the Arkansas State Highway and Transportation Department are hereby authorized to complete and sign one (1) certification for each state voucher or other designated document that authorizes the Auditor of State, or other official, to draw



a state warrant or check on a fund administered by the Arkansas State Highway and Transportation Department.

(b) The voucher or other authorizing document can consist of one (1) or more pages and in the event that more than one (1) page is used, then the designated disbursing officer is to manually sign the last page only, and any certification is to be so worded that it will apply to all pages of the document.

**History.** Acts 1991, No. 872, § 16.

**A.C.R.C. Notes.** Former § 27-70-101, concerning certification of vouchers, etc., is deemed to be superseded by this section. The former section was derived from

Acts 1987, No. 742, § 15. A similar provision which was also codified as § 27-70-101, and was previously superseded, was derived from Acts 1985, No. 138, § 16.

### **27-70-102. Certification of amounts due — Distribution.**

(a) The Arkansas State Highway and Transportation Department, through its director, is authorized to certify to the Treasurer of State, Auditor of State, and the Chief Fiscal Officer of the State any amount that is due the department from a city or county of this state.

(b) Upon certification, the Treasurer of State, Auditor of State, and the Chief Fiscal Officer of the State shall record and transfer the amount so certified from the funds next to be distributed to the designated city or county, under the provisions of the Arkansas Highway Revenue Distribution Law, to the fund designated by the department. The amount may be a lump sum or in installments, as instructed by the department.

**History.** Acts 1987, No. 742, § 20.

**A.C.R.C. Notes.** Former § 27-70-102, concerning certification of amounts due and distribution, is deemed to be superseded by this section. The former section

was derived from Acts 1985, No. 138, § 18.

**Cross References.** Arkansas Highway Revenue Distribution Law, § 27-70-201 et seq.

### **27-70-103. State Highway Special Construction Account.**

(a) All taxes, penalties, and other amounts collected pursuant to the additional taxes and fees levied in §§ 26-55-205(b) and 26-56-201(a)(2) shall be classified as special revenues.

(b) After deducting therefrom the three percent (3%) for credit to the Constitutional Officers Fund and the State Central Services Fund as required by § 27-70-206(1), the Treasurer of State shall transfer the net amount remaining to the State Highway and Transportation Department Fund to be set aside in a special account therein to be known as the State Highway Special Construction Account to be used solely and exclusively by the State Highway Commission:

(1) For construction of roads and highways on the state highway system; and

(2) To provide funds for transfer to the State Aid Road Fund as may be provided by law.

(c) None of these funds shall be used for the construction of highway buildings, for the payment of salaries, for the purchase of supplies and materials, for highway maintenance, or any other purpose other than the construction of state highways.

(d) All taxes, penalties, and other amounts collected pursuant to §§ 26-55-205(b) and 26-56-201(a)(2) shall be distributed solely and exclusively for the purposes set forth in this section. None of the amounts shall be distributed as provided by § 27-70-206(2) and (3).

**History.** Acts 1973, No. 445, § 4; A.S.A. 1947, § 76-336; Acts 1989, No. 821, § 12.

**Cross References.** State Aid Road Fund, § 27-72-305.

## 27-70-104. Federal excise tax on motor fuels.

(a) Should the Congress of the United States extend an option to the State of Arkansas to collect all or part of the existing excise tax on motor fuels imposed by the Internal Revenue Code, Chapter 31, Retailers Excise Tax, §§ 4041 and 4081, it is declared that the option is executed.

(b) Further, if the federal excise tax is reduced in any amount, the amount of the reduction will continue to be collected as state highway user revenues.

(c) Any increase in the federal excise tax, accompanied by state option, shall be disbursed as set forth in subsection (d) of this section.

(d) Any revenues derived under subsection (a) of this section will be classified as special revenues and shall be deposited in the State Treasury to the credit of the State Apportionment Fund for distribution under the Arkansas Highway Revenue Distribution Law, there to be used for the construction of state highways, county roads, and municipal streets.

**History.** Acts 1975, No. 610, §§ 1, 2; 1981, No. 719, § 1; A.S.A. 1947, §§ 76-337, 76-338.

the Internal Revenue Code, referred to in this section, are codified as 26 U.S.C. §§ 4041 and 4081.

**U.S. Code.** Sections 4041 and 4081 of

## SUBCHAPTER 2 — ARKANSAS HIGHWAY REVENUE DISTRIBUTION LAW

### SECTION.

- 27-70-201. Title.
- 27-70-202. Definition.
- 27-70-203. Deposit in State Apportionment Fund.
- 27-70-204. Interest on state highway department funds.
- 27-70-205. Federal Revenue Sharing State Highway Trust Fund Account.

### SECTION.

- 27-70-206. Distribution to state funds.
- 27-70-207. Distribution to county funds.
- 27-70-208. Disposition of gross receipts taxes on gasohol.
- 27-70-209. [Repealed.]

**Cross References.** Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq.

Direct deposits by the State into local government cash management trust ac-



count, § 19-8-311.

Municipal Aid Fund, § 19-5-601 et seq.  
Revenue Classification Law, § 19-6-201 et seq.

**Preambles.** Acts 1979, No. 438 contained a preamble which read: "Whereas, the revenue from the investment of monies in the State Highway Department Fund is not now being used for highway purposes; and

"Whereas, the funds in the State Highway Department Fund are derived wholly from taxes and other fees levied upon highway users; and

"Whereas, the use of the income from investments of the State Highway Department Fund for other than Highway purposes constitutes a diversion of tax monies for non-highway purposes contrary to the legislative intent of these statutory levies;

"Now, therefore...."

**Effective Dates.** Acts 1965 (1st Ex. Sess.), No. 39, § 8: July 1, 1965. Emergency clause provided: "It has been found and it is hereby declared by the General Assembly: (a) that traffic accidents resulting in injuries and deaths of persons and damages to property are increasing at an alarming rate due in part to the condition of many roads, streets and highways in the State; (b) that a formula for the distribution of highway revenues is necessary in order that the counties, cities and State Highway Department may properly plan for financing the construction and reconstruction of roads, streets and highways and be in a position to commence immediately the elimination of the most hazardous road conditions and thereby reduce the incidence of accidents; and that only by the passage of this act and the giving of immediate effect to its provisions may proper planning and financing be accomplished. Therefore, an emergency is hereby declared to exist, and this act being necessary for the preservation of the public peace, health and safety shall take effect and be in full force on and after July 1, 1965."

Acts 1967, No. 11, § 2: Jan. 26, 1967. Emergency clause provided: "It is hereby found and determined by the General Assembly that the efficient administration of county roads is dependent upon a steady and adequate source of revenues therefor; that the present laws of this State provide for quarterly distribution to counties of

the portion of highway revenues to be received by counties, and that such delay in receiving such funds often makes it impossible for counties to take advantage of discounts for prompt payment of purchases and disrupts the orderly payment of county road bills; and, that by the immediate passage of this act, such situation may be corrected and thereby provide for the more efficient and economical administration of county roads. Therefore, an emergency is hereby declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1967, No. 41, § 2: Apr. 1, 1967. Emergency clause provided: "Whereas, municipalities operate on a fiscal year based on the calendar year of January through December and the state operates on a fiscal year of July through June and in order for all towns and cities to receive as nearly equal turnbacks during 1967 as possible, an emergency is hereby declared to exist and this Act being necessary for immediate protection of the public peace, health and safety, this Act shall take effect April 1, 1967, and shall be applicable to all Highway Revenues for towns and cities after March 31, 1967."

Acts 1968 (1st Ex. Sess.), No. 10, § 3: Feb. 15, 1968. Emergency clause provided: "It is hereby found and determined by the General Assembly that Subsection (b) of Section (5) of Act 39 of 1965 (First Extraordinary Session) provides for a distribution of certain fees to the County Aid Fund using as part of a determining factor the fees collected in each county for sale of Motor Vehicle License; that the Permanent Automobile Licensing Act of 1967 provides for the securing of motor vehicle licenses by mail from the Commissioner of Revenues, Little Rock, Pulaski County, Arkansas; that if Subsection (b) of Section (5) of Act 39 of 1965 (First Extraordinary Session) is not amended by this Act, then Pulaski County will receive credit for purpose of distribution to the County Aid Fund for all licenses secured from the Commissioner of Revenues by mail; that this Act would remedy this situation by changing the determining factor from 'fees collected in such county' to 'fees collected from such county'; that the securing of license plates by mail is now in effect; and



that, in order to remedy the above setout problem, it is necessary that this Act become effective immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1973, No. 445, § 26: July 1, 1973. Emergency clause provided: "It is hereby found and determined by the General Assembly that immediate steps must be taken to provide additional State funds, and to allocate federal revenue sharing funds, for the construction of State highways which are essential to the public health, safety, and welfare and that the immediate passage of this Act is necessary in order that fiscal officials of the State may make plans to prepare for the collection of additional highway revenues effective from and after July 1, 1973. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after July 1, 1973."

Acts 1977, No. 241, § 5: Feb. 24, 1977. Emergency clause provided: "It is hereby found and determined by the Seventy-First General Assembly that in order to clarify the disposition of funds provided under the State and Local Fiscal Assistance Act of 1972, P.L. 92-512, as amended, by P.L. 94-488, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

Acts 1979, No. 438, § 5: Mar. 20, 1979. Emergency clause provided: "It has been found and it is hereby declared by the General Assembly of the State of Arkansas that funds intended to be used for highway purposes are being diverted to other uses while there is an urgent need for all available funds to be used in the maintenance and construction of the State Highway System. Therefore, an emergency is declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect immediately upon its passage and approval."

Acts 1981, No. 865, § 4: Mar. 28, 1981. Emergency clause provided: "It has been

found and is hereby declared that the construction and maintenance of the State highways is a matter of immediate concern to the citizens of the State of Arkansas. Therefore, an emergency is hereby declared to exist and this Act, being necessary for the preservation of the public peace, health and safety shall be in effect upon passage and approval."

Acts 2007, No. 1100, § 4: Apr. 4, 2007. Emergency clause provided: "It is hereby found and determined by the Eighty-sixth General Assembly that there is an immediate need for the construction, reconstruction, and maintenance of highways and roads comprising the State highway system and to provide additional funds for county and municipal aid and that such programs cannot be accomplished without additional funding. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2008 (1st Ex. Sess.), Nos. 4 and 5, § 12: Apr. 2, 2008. Emergency clause provided: "It is found and determined by the General Assembly that state and local roads and highways are in need of substantial expansion, maintenance and repair, and that additional funding is necessary to address this need. It is also found and determined that increasing development and exploitation of natural gas resources in the Fayetteville Shale Play and in other areas of this state has significantly increased the burden and wear and tear on state and local roads and highway, further exacerbating the need for maintenance and repair. It is also found and determined that previous surpluses in state revenue have been largely spent to improve public education and educational facilities in this state, as was required by the Constitution as interpreted by the Arkansas Supreme Court in the Lake View case and additional revenues must be generated from other sources to address the needs of our roads and high-

ways. It is further found and determined that due to recent and dramatic increases in the price of gasoline, and the fact that funds for highways are generated from a flat per-gallon tax, the increasing use of more fuel-efficient vehicles has caused a condition in which revenue for roads and highways has not kept pace with the wear and tear caused by vehicular use. It is further found and determined that immediate enactment of this bill is necessary to provide adequate time for various administrative agencies of state government to prepare the necessary reporting forms

and instructions, to educate taxpayers responsible for paying the additional taxes levied herein, and take other steps necessary for the proper implementation and administration of this act. Therefore, the General Assembly hereby finds and declares that an emergency exists, pursuant to Article V, § 38 of the Arkansas Constitution, and this Act, being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect from and after January 1, 2009."

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### 27-70-201. Title.

This subchapter may be referred to and cited as the "Arkansas Highway Revenue Distribution Law".

**History.** Acts 1965 (1st Ex. Sess.), No. 39, § 1; A.S.A. 1947, § 76-330.

### 27-70-202. Definition.

(a) As used in this subchapter, unless the context otherwise requires, "highway revenues" means and includes the following special revenues:

(1) Fees for the registration and licensing of motor vehicles, levied and collected under §§ 27-14-305, 27-14-601, 27-14-603, 27-14-605, 27-14-702, 27-14-704, 27-14-709, 27-14-716, 27-14-717, 27-14-914, 27-14-915, §§ 27-14-501 et seq., 27-14-1101 et seq., 27-14-1201 et seq., 27-14-1301 et seq., 27-14-1401 et seq., 27-14-1501 et seq., 27-14-1801 et seq., 27-14-1901 et seq., and 27-14-21 et seq., and § 27-15-101 et seq., except motor vehicle in-transit taxes and drive-out tag fees levied, respectively, under §§ 27-14-1805 and 27-14-2104;

(2) Taxes levied and collected under the Motor Fuel Tax Law, § 26-55-201 et seq., and the Special Motor Fuels Tax Law, § 26-56-101 et seq., commonly referred to, and denominated by the Director of the Department of Finance and Administration for tax distribution purposes, as the gasoline tax; and

(3) Ninety-five percent (95%) of the severance tax levied and collected on natural gas under § 26-58-111(5).

(b) For the purposes of this section, any penalties, fines, charges, or other amounts paid in connection with or in lieu of any of the foregoing enumeration shall be deemed, unless otherwise expressly provided for by law, to be highway revenues and shall be added to and considered as a part of the particular foregoing enumeration to which it shall respectively belong.



**History.** Acts 1965 (1st Ex. Sess.), No. 39, § 2; A.S.A. 1947, § 76-331; Acts 2008 (1st Ex. Sess.), No. 4, § 11; 2008 (1st Ex. Sess.), No. 5, § 11.

**A.C.R.C. Notes.** The 2008 (1st Ex. Sess.), Nos. 4 and 5, § 1, provided: "Legislative findings and intent. (a) The General Assembly has determined that the severance tax rate on natural gas should be increased and that there should be different rates of tax for different categories of natural gas.

"(b) Amendment 19 of the Arkansas Constitution required this act to be passed by at least three-fourths of the members of the Senate and at least three-fourths of the members of the House of Representatives.

"(c) In order to implement the increase in the severance tax rate, the General Assembly has identified the following four categories of natural gas, each as defined in Arkansas Code § 26-58-101:

"(1) High-cost gas;

"(2) Marginal gas;

"(3) New discovery gas; and

"(4) All natural gas that is not defined as high-cost gas, marginal gas, or new discovery gas.

"(d) To increase the severance tax rate, the General Assembly used the method of levying a specific tax rate on each category so that any future legislative enactment that would have the effect of increasing the rate of severance tax on any of those categories of natural gas as defined by § 26-58-101 will also be subject to the three-fourths vote requirement of Amendment 19 of the Arkansas Constitution."

**Amendments.** The 2008 (1st Ex. Sess.) amendment by identical acts Nos. 4 and 5, effective January 1, 2009, added (a)(3).

**Cross References.** Disposition of misdemeanor fines and forfeitures, § 27-14-313.

Penalty for using or making unofficial license plates, § 27-14-305.

**Effective Dates.** Acts 2008 (1st Ex. Sess.), Nos. 4 and 5, § 12: Jan. 1, 2009, by their own terms.

## 27-70-203. Deposit in State Apportionment Fund.

All highway revenues shall be deposited in the State Treasury to the credit of the State Apportionment Fund. After deducting the amount of uncollected checks and reserving the amount as shall be required to liquidate claims for taxes erroneously paid, the Treasurer of State shall, on the last business day of each month, transfer these highway revenues in the amounts or proportions, and to the State Treasury funds, specified in § 27-70-206.

**History.** Acts 1965 (1st Ex. Sess.), No. 39, § 3; A.S.A. 1947, § 76-332.

## 27-70-204. Interest on state highway department funds.

(a) On the first day of business of the month, the Treasurer of State shall compute the average daily balance of the State Highway and Transportation Department Fund, including all internal accounts and funds, including, but not limited to, the Special Construction Account, the State Aid Road Fund, the State Aid Street Account, the State Highway and Transportation Department Fund, and any other funds administered by the Arkansas State Highway and Transportation Department during the preceding month and shall transfer on that day to the State Highway and Transportation Department Fund interest on the average daily balance to be computed at a rate equivalent to the average rate of interest earned on all State Treasury funds invested, excluding the interest rate paid on open account deposits, during the preceding month.



(b) All interest earned on the accounts described in subsection (a) of this section shall be classified as special revenues, and the net amount shall be distributed as provided by this subchapter.

**History.** Acts 1979, No. 438, §§ 1, 2; A.S.A. 1947, §§ 76-332.1, 76-332.2.

**Cross References.** Arkansas Governmental Compliance Act, § 10-4-301 et seq.

### **27-70-205. Federal Revenue Sharing State Highway Trust Fund Account.**

Commencing with the federal funds received by the State of Arkansas under the provisions of the State and Local Fiscal Assistance Act of 1972, Public Law 92-512, as amended, commonly and hereinafter referred to as "federal revenue-sharing funds", all federal revenue sharing funds received each fiscal year by the State of Arkansas for the use and benefit of the State of Arkansas shall be transferred to and allocated to a special trust fund to be established in the State Highway and Transportation Department Fund, to be known as the Federal Revenue Sharing State Highway Trust Fund Account, to be set aside and used by the State Highway Commission solely and exclusively for construction of highways on the state highway system and the state aid street system. All funds shall be administered and the controls and accounting thereof shall be in accordance with the provisions of the State and Local Fiscal Assistance Act of 1972, Public Law 92-512, as amended, and all regulations promulgated thereunder, and in accordance with the laws of this state governing the advertising and awarding contracts for, and payment of, construction contracts to be awarded by the commission.

**History.** Acts 1973, No. 445, § 3; 1977, No. 241, § 1; A.S.A. 1947, § 76-335.

**Cross References.** State aid street system, § 27-72-401 et seq.

**U.S. Code.** The State and Local Fiscal Assistance Act of 1972, referred to in this section, is primarily codified as 31 U.S.C. § 6702 et seq.

State highway system, § 27-67-101 et seq.

### **27-70-206. Distribution to state funds.**

All highway revenues which are available for distribution during each fiscal year shall be transferred to the following State Treasury funds, and in the order specified, with transfers to be made monthly until all available revenues have been transferred:

(1) First, three percent (3%) of the amount thereof to the Constitutional Officers Fund and the State Central Services Fund, there to be used for the purposes specified for the fund by the Revenue Stabilization Law, § 19-5-101 et seq.;

(2) Next, to the Gasoline Tax Refund Fund, such amount as the Director of the Department of Finance and Administration shall, from time to time, certify to the Treasurer of State as being necessary to pay approved gasoline tax refund claims under the provisions of §§ 26-55-301 — 26-55-321 [Repealed] and 26-55-401 — 26-55-408, or other

applicable law. However, the aggregate total amount of all transfers under this paragraph shall not exceed two million five hundred thousand dollars (\$2,500,000) during any fiscal year; and

(3) After meeting the requirements set out in the foregoing subdivisions, all remaining highway revenues which are available for distribution during each fiscal year shall be transferred in the following manner: Fifteen percent (15%) of the amount thereof, to the County Aid Fund; Fifteen percent (15%) of the amount thereof, to the Municipal Aid Fund; and seventy percent (70%) of the amount thereof, to the State Highway and Transportation Department Fund.

**History.** Acts 1965 (1st Ex. Sess.), No. 39, § 4; A.S.A. 1947, § 76-333.

### **27-70-207. Distribution to county funds.**

(a)(1)(A) With the exception of those revenues transferred pursuant to Section 2 of the Highway Improvement Revenue Act of 2007, all highway revenues transferred to the County Aid Fund under this subchapter shall be paid over by the Treasurer of State to the treasurers of the respective counties of this state for credit to the county highway fund, there to be used for the maintenance, construction, and reconstruction of roads and bridges in the county highway system, provided, however, that no more than twenty percent (20%) of the revenues received by a county during any fiscal year may also be used for public transportation.

(B) A county may also use these funds to construct and maintain parking for county courthouses, county administration buildings, county health units, and county parks and to construct and maintain sidewalks that serve county courthouses, county administration buildings, county health units, county parks, public schools, and other publicly owned property.

(C) A county may use these funds to pay for local projects eligible for funding under state programs of the Arkansas State Highway and Transportation Department and the State Highway Commission and under federal programs of the Federal Highway Administration of the United States Department of Transportation.

(D) Furthermore, the funds may be used to install and maintain traffic signals where needed to preserve public health, safety, and welfare.

(E) A county may provide these funds to a regional mobility authority to match federal transportation funds for the financing of surface transportation system improvements on state highways, county roads, and city streets.

(2)(A) Funds disbursed to the County Aid Fund pursuant to Section 2 of the Highway Improvement Revenue Act of 2007 may be expended by the counties on any legitimate county purpose and are not limited to the uses set forth in subdivision (a)(1) of this section.

(B) Funds disbursed to the County Aid Fund pursuant to Section 2 of the Highway Improvement Revenue Act of 2007 shall be distrib-



uted to the various counties as are other funds contained in the County Aid Fund pursuant to subdivision (a)(3) of this section.

(3) The Treasurer of State shall on or before the tenth day next following the last day of each calendar month make distribution of the revenues on the following basis:

(A) Thirty-one percent (31%) of the amount according to area, with each county to receive the proportion that its area bears to the area of the state;

(B) Seventeen and one-half percent (17.5%) of the amount according to the amount of state motor vehicle license fees collected in the calendar year next preceding any distribution as certified to the Treasurer of State by the Director of the Department of Finance and Administration, with each county to receive the proportion that the total of fees collected from the county bears to the total of fees collected in the state;

(C) Seventeen and one-half percent (17.5%) of the amount according to population based upon the most recent federal decennial census, with each county to receive the proportion that its population bears to the population of the state;

(D) Thirteen and one-half percent (13.5%) of the amount according to rural population based upon the most recent federal decennial census, with each county to receive the proportion that its rural population bears to the rural population of the state; and

(E) Twenty and one-half percent (20.5%) of the amount shall be divided equally among the seventy-five (75) counties.

(b)(1)(A) With the exception of those revenues transferred pursuant to Section 2 of the Highway Improvement Revenue Act of 2007, all highway revenues transferred to the Municipal Aid Fund under the provisions of this subchapter shall be paid over by the Treasurer of State to the treasurers of the respective cities of the first class, cities of the second class, and incorporated towns for credit to the street fund, there to be used for the maintenance, construction, and reconstruction of streets that are not continuations of state highways.

(B)(i) Provided, however, that cities with a population in excess of fifty thousand (50,000) inhabitants may use no more than ten percent (10%) of the revenues for public transportation.

(ii) All other cities may use no more than twenty percent (20%) of the revenues for public transportation.

(C) A city may provide these funds to a regional mobility authority to match federal transportation funds for the financing of surface transportation system improvements on state highways, county roads, and city streets.

(2) The Treasurer of State shall on or before the tenth day next following the last day of each calendar month make distribution of the funds on the basis of population according to the most recent federal census, with the amount to be paid over to each city or incorporated town in the proportion that its population bears to the total population of all cities and towns.



(3)(A) Funds disbursed to the Municipal Aid Fund pursuant to Section 2 of the Highway Improvement Revenue Act of 2007 may be expended by the cities on any legitimate municipal purpose and are not limited to the uses set forth in subdivision (b)(1) of this section.

(B) Funds disbursed to the Municipal Aid Fund pursuant to Section 2 of the Highway Improvement Revenue Act of 2007 shall be distributed to the various cities as are other funds contained in the Municipal Aid Fund pursuant to subdivision (b)(2) of this section.

(c)(1) All highway revenues transferred to the State Highway and Transportation Department Fund under the provisions of this subchapter shall be used for the construction, reconstruction, and maintenance of highways and bridges in the state highway system.

(2)(A) However, the Arkansas State Highway and Transportation Department may use highway revenues transferred to the State Highway and Transportation Department Fund for the installation, upgrading, or improvement of any highway-railroad crossing safety device, railroad crossing traffic control device, warning lights, crossing gates, or other railroad crossing safety devices at public highway railroad crossings and for the construction, reconstruction, and maintenance of any highway-railroad crossing, including the construction or installation of any underpasses or overpasses.

(B) Except for the construction or installation of underpasses or overpasses, the department's goal is to expend one dollar (\$1.00) of state funds for each dollar of federal funds received to improve railroad crossing safety and to reduce railroad crossing accidents.

(C) It is the intent of this subdivision (c)(2) to encourage the State Highway Commission to continue to upgrade the state's highway-railway crossings with traffic control devices, warning lights, crossing gates, and other appropriate devices in order to increase the safety of persons using the state's highways.

**History.** Acts 1965 (1st Ex. Sess.), No. 39, § 5; 1967, No. 11, § 1; 1967, No. 41, § 1; 1967, No. 417, § 1; 1968 (1st Ex. Sess.), No. 10, § 1; A.S.A. 1947, § 76-334; Acts 1989, No. 371, § 1; 1997, No. 361, § 1; 1999, No. 724, § 1; 2001, No. 1216, § 1; 2003, No. 208, § 1; 2005, No. 2275, § 7; 2007, No. 389, § 2; 2007, No. 1100, § 3.

**A.C.R.C. Notes.** Acts 2007, No. 1100, § 1, provided:

"(a) This Act may be referred to and cited as the Highway Improvement Revenue Act of 2007.

"(b) It is found by the General Assembly that in order to provide for adequate state highway construction, reconstruction, and maintenance, and for providing additional county aid and municipal aid, revenue must be available from the State surplus and dedicated as special revenue

for the purpose of constructing, reconstructing and maintaining the state highway system and for providing additional funds for county aid and municipal aid."

Acts 2007, No. 1100, § 2, provided:

"In order to provide a source of revenue to finance highway construction, reconstruction, maintenance, and to provide additional monies for county aid and municipal aid, immediately upon the effective date of this act, the Chief Fiscal Officer of the State shall transfer on his books and those of the State Treasure and Auditor of State, the sum of eighty million dollars (\$80,000,000) from the General Revenue Allotment Reserve Fund, which immediately such sum shall be declared as special revenue, and disbursed as follows:

"(1) Fifteen percent (15%) of the amount thereof to the County Aid Fund;

"(2) Fifteen percent (15%) of the amount thereof to the Municipal Aid Fund; and

"(3) Seventy percent (70%) of the amount thereof to the State Highway and Transportation Department Fund.

"(b) Funds disbursed to the County Aid Fund pursuant to this act, and as appropriated to the Department of Finance and Administration Disbursing Officer, shall be used for supplementing the funds made available to each of the seventy five counties by the same distribution as authorized in Arkansas Code 19-5-602(c)(1)(A).

"Funds disbursed to the Municipal Aid Fund pursuant to this act, and as appropriated to the Department of Finance and Administration Disbursing Officer, shall be used for supplementing the distribution of funds apportioned to each city or

incorporated town in the same proportion as authorized in Arkansas Code 19-5-601.

"Funds disbursed to the County Aid Fund and the Municipal Aid Fund pursuant to this act may be expended on any legitimate county or municipal purpose and are not limited to expenditures for highway related purposes."

**Amendments.** The 2007 amendment by No. 384, in (a)(1), inserted "and the State Highway Commission" in (C), and deleted "to match federal transportation funds" following "authority" in (E).

The 2007 amendment by No. 1100 substituted "With the exception of those revenues transferred pursuant to Section 2 of the Highway Improvement Revenue Act of 2007, all" for "All" in (a)(1)(A) and (b)(1)(A); added (a)(2); added (b)(3); and made related changes.

## **27-70-208. Disposition of gross receipts taxes on gasohol.**

The gross receipts taxes levied and collected on gasohol, which was exempted from the motor fuel tax by Acts 1979, No. 433, § 1E (repealed), and from the special motor fuel tax by Acts 1965 (1st Ex. Sess.), No. 40, Ch. 2, § 2 (repealed), shall be used by the Arkansas State Highway and Transportation Department to defray, in whole or in part, the cost of constructing, widening, reconstructing, maintaining, resurfacing, or repairing the public highways, and retiring highway indebtedness of this state. These taxes shall be remitted to the department in accordance with this subchapter.

**History.** Acts 1981, No. 865, § 1; A.S.A. 1947, § 76-334.1; Acts 1989, No. 821, § 13.

## **27-70-209. [Repealed.]**

**Publisher's Notes.** This section, concerning highway construction and maintenance bonds, was repealed by Acts 1995,

No. 1007, § 17. The section was derived from Acts 1991, No. 1040, § 1; 1991, No. 1239, § 1.

## **SUBCHAPTER 3 — REGIONAL MOBILITY AUTHORITY ACT**

### **SECTION.**

27-70-301 — 27-70-316. [Repealed.]

## **27-70-301 — 27-70-316. [Repealed.]**

**Publisher's Notes.** This subchapter, concerning the Regional Mobility Authority Act, was repealed by Acts 2007, No. 389, § 3. The subchapter was derived from the following sources:

27-70-301. Acts 2005, No. 2275, § 1.  
27-70-302. Acts 2005, No. 2275, § 1.  
27-70-303. Acts 2005, No. 2275, § 1.  
27-70-304. Acts 2005, No. 2275, § 1.  
27-70-305. Acts 2005, No. 2275, § 1.

27-70-306. Acts 2005, No. 2275, § 1.  
 27-70-307. Acts 2005, No. 2275, § 1.  
 27-70-308. Acts 2005, No. 2275, § 1.  
 27-70-309. Acts 2005, No. 2275, § 1.  
 27-70-310. Acts 2005, No. 2275, § 1.  
 27-70-311. Acts 2005, No. 2275, § 1.

27-70-312. Acts 2005, No. 2275, § 1.  
 27-70-313. Acts 2005, No. 2275, § 1.  
 27-70-314. Acts 2005, No. 2275, § 1.  
 27-70-315. Acts 2005, No. 2275, § 1.  
 27-70-316. Acts 2005, No. 2275, § 1.

## CHAPTER 71

### TURNPIKES

#### SECTION.

27-71-101 — 27-71-504. [Repealed.]

**Effective Dates.** Acts 2003, No. 296, § 11: Mar. 4, 2003. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that there is an immediate need for the planning and development of certain turnpike projects within the State of Arkansas, and that the planning and development will be facilitated by this act having immediate effect. Therefore, an emergency is declared to exist and this act

being immediately necessary for the preservation of the public peace, health and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

#### 27-71-101 — 27-71-504. [Repealed.]

**Publisher's Notes.** Subchapters 1-4 of this chapter were repealed by Acts 2003, No. 296, §§ 7-10, respectively, effectively repealing this chapter. For present law, see § 27-90-201 et seq. The chapter was derived from:

27-71-101. Acts 1973, No. 312, § 1; A.S.A. 1947, § 76-2401.

27-71-102. Acts 1973, No. 312, § 22; A.S.A. 1947, § 76-2423.

27-71-103. Acts 1973, No. 312, § 8; A.S.A. 1947, § 76-2409; Acts 1991, No. 547, § 2.

27-71-104. Acts 1973, No. 312, § 18; A.S.A. 1947, § 76-2419.

27-71-105. Acts 1973, No. 312, § 23; A.S.A. 1947, § 76-2424.

27-71-201. Acts 1973, No. 312, § 2; A.S.A. 1947, § 76-2402.

27-71-202. Acts 1973, No. 312, §§ 3, 4; A.S.A. 1947, §§ 76-2403, 76-2405.

27-71-203. Acts 1973, No. 312, § 3; A.S.A. 1947, § 76-2403.

27-71-204. Acts 1973, No. 312, § 7; A.S.A. 1947, § 76-2408.

27-71-205. Acts 1973, No. 312, § 6; A.S.A. 1947, § 76-2407.

27-71-206. Acts 1973, No. 312, § 5; A.S.A. 1947, § 76-2406.

27-71-207. Acts 1973, No. 312, § 20; A.S.A. 1947, § 76-2421.

27-71-208. Acts 1973, No. 312, § 10; A.S.A. 1947, § 76-2410.

27-71-209. Acts 1973, No. 312, § 9; A.S.A. 1947, § 76-2411.

27-71-210. Acts 1973, No. 312, § 21; A.S.A. 1947, § 76-2422.

27-71-301. Acts 1973, No. 312, § 11; A.S.A. 1947, § 76-2412.

27-71-302. Acts 1973, No. 312, § 11; A.S.A. 1947, § 76-2412.

27-71-303. Acts 1973, No. 312, § 11; A.S.A. 1947, § 76-2412.

27-71-304. Acts 1973, No. 312, § 11; A.S.A. 1947, § 76-2412.

27-71-305. Acts 1973, No. 312, § 11; A.S.A. 1947, § 76-2412.

27-71-306. Acts 1973, No. 312, § 11; A.S.A. 1947, § 76-2412.



27-71-307. Acts 1973, No. 312, § 11; A.S.A. 1947, § 76-2412.

27-71-308. Acts 1973, No. 312, § 11; A.S.A. 1947, § 76-2412.

27-71-401. Acts 1973, No. 312, § 12; 1979, No. 826, §§ 1, 2; 1979, No. 985, §§ 1, 2; A.S.A. 1947, § 76-2413.

27-71-402. Acts 1973, No. 312, § 12; 1979, No. 826, §§ 1, 2; 1979, No. 985, §§ 1, 2; A.S.A. 1947, § 76-2413.

27-71-403. Acts 1973, No. 312, § 12; 1979, No. 826, §§ 1, 2; 1979, No. 985, §§ 1, 2; A.S.A. 1947, § 76-2413.

27-71-404. Acts 1973, No. 312, § 12; 1979, No. 826, §§ 1, 2; 1979, No. 985, §§ 1, 2; A.S.A. 1947, § 76-2413.

27-71-405. Acts 1973, No. 312, § 12; 1979, No. 826, §§ 1, 2; 1979, No. 985, §§ 1, 2; A.S.A. 1947, § 76-2413.

27-71-406. Acts 1973, No. 312, § 13; A.S.A. 1947, § 76-2414.

27-71-407. Acts 1973, No. 312, §§ 11, 14; A.S.A. 1947, §§ 76-2412, 76-2415.

27-71-408. Acts 1973, No. 312, § 15; A.S.A. 1947, § 76-2416.

27-71-409. Acts 1973, No. 312, § 16; A.S.A. 1947, § 76-2417.

27-71-410. Acts 1973, No. 312, § 17; A.S.A. 1947, § 76-2418.

27-71-411. Acts 1973, No. 312, § 19; A.S.A. 1947, § 76-2420.

Subchapter 5 of this chapter was previously repealed by Acts 1995, No. 1232, § 4. The subchapter was derived from the following sources:

27-71-501. Acts 1989, No. 192, § 1.

27-71-502. Acts 1989, No. 192, § 2.

27-71-503. Acts 1989, No. 192, §§ 3, 4.

27-71-504. Acts 1989, No. 192, § 5.

## CHAPTER 72

### HIGHWAY REVENUES FOR LOCAL AID

#### SUBCHAPTER.

1. GENERAL PROVISIONS.
2. VIOLATIONS OF FEDERAL-AID AGREEMENTS.
3. STATE AID ROADS.
4. STATE AID STREETS.
5. STATE AID BRIDGES.

#### SUBCHAPTER 1 — GENERAL PROVISIONS

##### SECTION.

27-72-101. Plans and engineering ser-

vices for county federal-aid secondary road projects.

**Effective Dates.** Acts 1963, No. 263, § 3: Mar. 18, 1963. Emergency clause provided: "It has been found by the General Assembly of the State of Arkansas that the counties of this State are without adequate planning and engineering services essential in the formulation of contracts for federal aid secondary road projects; that said counties, due to lack of funds and to impracticalities, are unable to procure such planning and engineering

services; and that it is necessary that such services be furnished by the State Highway Department, free of charge, in order for the said counties to obtain full advantage of federal aid to secondary road projects. Therefore, this act being immediately necessary for the preservation of the public peace, health, and safety, an emergency is declared to exist and this act shall be in force and effect from and after its passage and approval."

**27-72-101. Plans and engineering services for county federal-aid secondary road projects.**

(a) The Arkansas State Highway and Transportation Department is authorized and directed to furnish, without cost to counties, all plans and engineering services necessary in connection with all county negotiated contracts for federal-aid secondary road projects in all counties of this state.

(b) The cost of plans and engineering services shall be included in the cost of projects but shall not be chargeable to the county.

**History.** Acts 1963, No. 263, § 1; A.S.A. 1947, § 76-462.

**SUBCHAPTER 2 — VIOLATIONS OF FEDERAL-AID AGREEMENTS****SECTION.**

27-72-201. Funds to be withheld.

27-72-202. Duties of commission and Treasurer of State.

27-72-203. Project maintenance — Application of funds.

**SECTION.**

27-72-204. Project maintenance — Commission's discretion.

27-72-205. Priority of charge against funds.

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**Effective Dates.** Acts 1939, No. 338, § 6: approved Mar. 16, 1939. Emergency clause provided: "A vast amount of such projects now being maintained improperly or not at all, to the great loss and inconvenience to the public, an emergency is

hereby declared to exist, it being necessary for the preservation of the public peace, health, and safety of the state, this act shall be in effect and in full force from and after its passage."

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**27-72-201. Funds to be withheld.**

Where any political subdivision of the State of Arkansas has entered into an agreement with the United States Government, any agency or subdivision thereof, or the State Highway Commission to maintain projects constructed off the state highway system by the commission, with the use of United States governmental funds, upon written notice to the commission from the Federal Highway Administration that projects are being maintained insufficiently according to the agreement, the commission is authorized, ordered, and empowered to instruct the Treasurer of State to withhold payment from the County Aid Fund, which is payable or to be payable to the various political subdivisions of the State of Arkansas, if the commission, after investigation, finds the political subdivisions have failed to live up to the agreement.

**History.** Acts 1939, No. 338, § 1; A.S.A. 1947, § 76-416.

**27-72-202. Duties of commission and Treasurer of State.**

(a) The State Highway Commission, upon receipt of written notice from the Federal Highway Administration to the effect that political subdivisions have violated the agreement set out in § 27-72-201, shall immediately proceed to investigate the report and shall make a final determination of the amount of money necessary to maintain the projects properly.

(b) After this determination, the commission shall, by resolution, inform the Treasurer of State of the facts.

(c) The Treasurer of State shall immediately withhold payment as set out in § 27-72-201 and transmit his warrants as funds accrue from time to time to the commission until the amount determined by the commission is fully satisfied.

(d) In the event the amount of the County Aid Fund payable or to be payable to the respective political subdivisions is over and above the amount determined by the commission, then after being informed by the commission, the Treasurer of State shall release and transmit his warrant for the remainder to the proper authorities of the respective counties who have violated the agreement.

**History.** Acts 1939, No. 338, § 2; A.S.A. 1947, § 76-417.

**27-72-203. Project maintenance — Application of funds.**

(a) Upon receipt of the warrant or warrants from the Treasurer of State, the State Highway Commission shall apply such funds to the maintenance of the project or projects on which agreements have been violated for the amount or amounts pro rata as the commission shall deem best.

(b) In the event the commission has expended its own funds for maintenance of the projects, then the amounts so expended from state maintenance funds shall be replaced by funds from the warrants received from the Treasurer of State in the amount expended.

**History.** Acts 1939, No. 338, § 3; A.S.A. 1947, § 76-418.

**27-72-204. Project maintenance — Commission's discretion.**

When the State Highway Commission finds the agreements relative to the various projects have been violated, the commission may, at its discretion, commence and cease to maintain the projects, subject to reimbursement as set out in § 27-72-203.

**History.** Acts 1939, No. 338, § 4; A.S.A. 1947, § 76-419.



### 27-72-205. Priority of charge against funds.

Upon determination by the State Highway Commission that the agreement has been violated, and commencing on the date of notice to the Treasurer of State, there shall be a charge upon funds set out in this subchapter which shall take priority over any other obligations on the funds.

**History.** Acts 1939, No. 338, § 5; A.S.A. 1947, § 76-420.

## SUBCHAPTER 3 — STATE AID ROADS

### SECTION.

- 27-72-301. Definitions.
- 27-72-302. Establishment — Scope.
- 27-72-303. Division of State Aid Road Construction.
- 27-72-304. State aid engineer.
- 27-72-305. State Aid Road Fund.
- 27-72-306. County Supplement Fund Account.
- 27-72-307. Expenses paid prior to allocation.
- 27-72-308. Eligibility for state aid — Notice.
- 27-72-309. Allocation of state aid.
- 27-72-310. Contracts for work to be performed.
- 27-72-311. Conditions for use of state aid.
- 27-72-312. Use of state aid.
- 27-72-313. Use of federal-aid secondary road funds.

### SECTION.

- 27-72-314. Disaster counties.
- 27-72-315. Rights-of-way — Exception.
- 27-72-316. Road maintenance by county — Failure to maintain.
- 27-72-317. County Road Construction and Maintenance Revolving Fund.
- 27-72-318. County highway revenue estimates.
- 27-72-319. Advance transfers from revolving fund — In general.
- 27-72-320. Advance transfers to county highway funds.
- 27-72-321. Advance transfers to county special purpose road accounts.

**Effective Dates.** Acts 1973, No. 445, § 26: July 1, 1973. Emergency clause provided: "It is hereby found and determined by the General Assembly that immediate steps must be taken to provide additional State funds, and to allocate federal revenue sharing funds, for the construction of State highways which are essential to the public health, safety, and welfare and that the immediate passage of this Act is necessary in order that fiscal officials of the State may make plans to prepare for the collection of additional highway revenues effective from and after July 1, 1973. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after July 1, 1973."

Acts 1975, No. 607, § 7: July 1, 1975. Emergency clause provided: "It is hereby found and determined by the General Assembly that immediate steps must be taken to provide additional State funds, for the construction of State Aid Roads which are essential to the public health, safety, and welfare of the local communities of the State, and that the immediate passage of this Act is necessary in order to do so from and after July 1, 1975. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after July 1, 1975."

Acts 1975 (Extended Sess., 1976), No. 1037, § 6: Jan. 29, 1976. Emergency clause provided: "It is hereby found and determined by the General Assembly that

immediate steps must be taken to provide additional State funds, for the construction of State-Aid Roads which are essential to the public health, safety, and welfare of the local communities of the State. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after the date of passage and approval."

Acts 1983, No. 467, § 3: Mar. 15, 1983. Emergency clause provided: "It is hereby determined by the General Assembly that the economic recession has caused a considerable curtailment of moneys available to counties for road construction purposes, and that inflation in recent years has resulted in a considerable strain on county moneys available for road improvements and construction; that the severe weather conditions in the early Winter of 1982 have resulted in major damage to county roads in this State; and that the immediate passage of this Act is necessary to change the ratio of county funds required to match moneys in the State-Aid Road Fund allocated to such counties, thereby enabling counties to accelerate their access to State-Aid Road Funds for repair and rebuilding of county roads on the State Aid Road System. Therefore, an emergency is hereby declared to exist and this Act, being immediately necessary for the preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

Acts 1985, No. 255, § 5: Mar. 5, 1985. Emergency clause provided: "It is hereby found and determined by the General Assembly that tornadoes, excessive rains and flooding which occur periodically result in considerable destruction and damage to county roads and bridges in the various counties in this State and that such counties are occasionally declared 'disaster counties' by the Governor or the appropriate federal official; that the matching requirements and use restrictions on State Aid Road Funds available to said counties will not enable such counties to adequately repair or restore the roads and bridges which were destroyed or damaged during such natural disasters; that, in addition, many of said counties will be eligible for federal disaster relief funds and/or Federal Secondary Highway Funds

to assist in defraying the cost of such disaster repairs or construction, but will not have sufficient matching monies available to enable said counties to gain the full benefits of the use of federal aid funds in connection with such projects; and that the immediate passage of this Act is necessary to amend the matching fund requirement and redefine the purposes for which State Aid Road funds allocated to said counties may be used. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1985, No. 553, § 2: Mar. 25, 1985. Emergency clause provided: "It is hereby found and determined by the General Assembly that Section 15 of Act 445 of 1973 imposed an obligation on counties to defray the cost of essential maintenance of county roads that were improved by construction with state aid monies from the State Aid Road Funds; that the provisions of said Section 15 as now written would require a county to continue to pay for maintenance costs on any such road or section thereof that is annexed into a city or town subsequent to the construction improvements; and that the immediate passage of this Act is necessary to clarify said law, thereby imposing the obligation upon the incorporating city or town to assume the responsibility for the maintenance of any such road or sections of roads in the area annexed to the city or town, thereby relieving the counties of this obligation. Therefore, an emergency is declared to exist and this Act, being immediately necessary for the preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

Acts 1985, No. 996, § 4: July 1, 1985. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present formula for funding the State Aid Road Fund is inadequate; that this Act prescribes a more adequate funding formula and should be given effect at the beginning of the next fiscal year; that the next fiscal year begins July 1, 1985, and unless this Emergency Clause is adopted, this Act probably will not go into effect until after July 1, 1985. Therefore, an emergency is hereby declared to exist, and this Act being imme-



diately necessary for the preservation of the public peace, health, and safety, shall be in full force and effect from and after July 1, 1985.”

Acts 1987, No. 863, § 6: Apr. 13, 1987. Emergency clause provided: “It is hereby found and determined by the General Assembly that because of the case *Ricarte v. State*, CR 86-31, a question has arisen over the validity of Act 1037 of the Extended Session of 1976; that this Act is a reenactment of the former law; and that the immediate passage of this Act is necessary to clarify the state of the law on this issue. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval.”

Acts 1993, No. 244, § 5: Feb. 26, 1993. Emergency clause provided: “It is hereby found and determined by the General Assembly that there is an urgent need for a periodic expansion of the state aid road system; that the current law limits the system to a total mileage of ten thousand (10,000) miles; that this act is designed to increase the maximum total mileage in the system and should be given effect immediately. Therefore, an emergency is hereby declared to exist, and this act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1999, No. 1028, § 9: Apr. 1, 1999. Emergency clause provided: “It is hereby found and determined by the Eighty-second General Assembly that existing highway user revenue sources do not provide sufficient funds for the necessary maintenance, repair, construction and reconstruction of state highways, county roads

and municipal streets; that there is an immediate and urgent need for adequate state highways, county roads and municipal streets; that the continued economic expansion and growth of this state will be jeopardized if an adequate system of state highways, county roads and municipal streets is not provided; and that only by the immediate passage of this act may such vitally needed additional funds be provided to solve these problems. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.”

Acts 2003, No. 1186, § 2: Apr. 9, 2003. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that moneys available in the State Aid Road Fund are necessary for the restoration and repair of county bridges and roads which are destroyed or extensively damaged by natural disasters, including those occurring after December 1, 2002. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

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## 27-72-301. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) “Betterment” means any construction or reconstruction on a state aid-designated road which results in an improvement which exceeds or equals any previous improvement whether or not the previous improvement was financed in part or in whole through the provisions of this subchapter;



(2) "Construction", "reconstruction", or "improvement" means any proposal submitted by a county court which meets the definition of betterment as opposed to maintenance;

(3) "Maintenance" means any act of work which maintains the improvement in serviceable condition;

(4) "State aid", by way of funds to be expended on state aid roads, means any sum or sums provided by the General Assembly to supplement funds furnished by the several counties for the purpose of constructing, improving, widening, straightening, surfacing, or reconstructing roads on the state aid system and shall be available to the several counties in a proportion to be fixed and determined by law; and

(5) "State aid roads" means that classification of county roads, including bridges and ferries, composing the major collector and minor collector routes feeding into local trade areas or into the state highway system, which are not designated as state highways, and particularly those essential to the conservation and development of natural resources, of economic and social value and encouraging desirable land utilization, having in addition one (1) or more of the following characteristics:

(A) They extend to the larger communities, including all incorporated towns;

(B) They connect with roads of major importance in adjoining counties;

(C) They connect with the state highways to form a complete network of main feeder roads;

(D) They carry heavy volumes of traffic serving major business and agricultural interests of the county; and

(E) They collect traffic at reasonable intervals from several local roads.

**History.** Acts 1973, No. 445, §§ 6, 7, 14; 1975, No. 607, § 4; 1975 (Extended Sess., 1976), No. 1037, § 3; A.S.A. 1947, §§ 76-452, 76-453, 76-460; reen. Acts 1987, No. 863, § 3.

**A.C.R.C. Notes.** Part of this section was reenacted by Acts 1987, No. 863, § 3.

Acts 1987, No. 834 provided that 1987 legislation reenacting acts passed in the 1976 Extended Session should not repeal any other 1987 legislation and that such other legislation would be controlling in the event of conflict.

## 27-72-302. Establishment — Scope.

(a) There is established a system of state aid roads in each county consisting of the major collector and minor collector routes not on the state highway system feeding into local trade areas or into the state highway system and providing a program for the construction and improvement of state aid roads.

(b) There is set up for designation by cooperative action of the state and counties a state aid system of roads, as classified and defined in this subchapter, which system shall be designated by the several county judges of their respective counties with the consent and approval of the state aid engineer and the State Highway Commission to a total

mileage not in excess of fifteen thousand (15,000) miles, including any municipal streets, and initially established at five thousand (5,000) miles, which five thousand (5,000) miles shall include all county roads on the federal-aid secondary road system. The system will periodically be expanded in one thousand-mile increments after the initial five thousand-mile system has been established.

(c) Nothing in this subchapter shall be construed to deprive or diminish the powers and duties of the county judge of any county in the exercise of his constitutional control over county roads.

**History.** Acts 1973, No. 445, §§ 5, 7; A.S.A. 1947, §§ 76-451, 76-453; Acts 1993, No. 244, § 1.

### **27-72-303. Division of State Aid Road Construction.**

There is created within the Arkansas State Highway and Transportation Department a division to be called the Division of State Aid Road Construction.

**History.** Acts 1973, No. 445, § 8; A.S.A. 1947, § 76-454.

### **27-72-304. State aid engineer.**

(a) The Division of State Aid Road Construction of the Arkansas State Highway and Transportation Department shall be headed by a state aid engineer to be appointed by and to serve at the pleasure of the State Highway Commission.

(b) The state aid engineer shall be a registered engineer with at least three (3) years experience as a county road or highway engineer and a thorough knowledge of rural road problems.

(c) The state aid engineer under the direction of the commission shall have the following powers and duties:

(1) To advise with the county judges of the several counties on all matters of policy, use of funds, uniform standards for state aid roads, safeguards in accounting methods, and other related matters and to cooperate with the several county judges on all matters connected with the laying out and construction of the state aid system of county roads;

(2) To promulgate uniform and reasonable rules and regulations as he may deem necessary to effectuate a proper designation of state aid roads to be constructed in each county, the methods for determining priority of construction, the making of surveys, and the preparation of plans and specifications for the construction of state aid roads;

(3) To provide a uniform system of accounting in the expenditure of state aid road funds;

(4) To prepare and promulgate practical uniform design standards and specifications for the construction of state aid roads in such a way as to get the most miles for each dollar, with the prime consideration being to provide economical, utilitarian paved roads suitable for rural needs, not to accommodate relatively large amounts of traffic or to be

designed for high speed transportation. These uniform design standards and specifications may be modified or amended from time to time as the state aid engineer deems necessary;

(5) To advise and cooperate with the county judges in the selection and designation of the county roads which are to be made a part of the state aid road system, as provided for in this subchapter, and to approve or disapprove the selection of roads to be made a part of the state aid road system by the respective county judges;

(6) To prepare and to submit to the commission all proposed contracts to be let for the construction or reconstruction of state aid roads, but before submitting the contracts to the commission, he or she shall submit them to the county judge of the county in which the work is to be performed in order that the county judge may determine that they include, in all respects, the work the county desires to be done in the county to be paid from its share of state aid funds; and

(7) To personally, or through his or her designated assistants, supervise and inspect all state aid road projects as the work progresses. Upon final completion of any project, the state aid engineer shall cause a final inspection to be made of the project for the purpose of determining whether the project has been completed satisfactorily in accordance with the plans and specifications, and if satisfactorily completed, he shall approve payment of the final estimate on the project. No progress or final estimate either on a contract or a force account project shall be paid unless approved in such manner by the state aid engineer, and on all contracts or force accounts projects a percentage of ten percent (10%) of each estimate thereon paid shall be retained until final acceptance of such project.

(d) The state aid engineer shall be subject to the direction of the commission; provided, both the state aid engineer and the commission shall be bound by the provisions hereof.

**History.** Acts 1973, No. 445, §§ 8, 9;  
A.S.A. 1947, §§ 76-454, 76-455.

### **27-72-305. State Aid Road Fund.**

(a)(1) There is created in the State Treasury a fund to be known as the State Aid Road Fund, to which the Treasurer of State shall transfer one hundred percent (100%) of the revenues credited to the State Highway Special Construction Account of the State Highway and Transportation Department Fund each month until an aggregate total of thirteen million dollars (\$13,000,000) each fiscal year is so transferred, there to be used for construction, reconstruction, and improvements of the state aid road system.

(2)(A) For the fiscal year beginning July 1, 2000, the limitation on the transfer of funds in this subsection (a) shall be increased to fifteen million dollars (\$15,000,000);



(B) For the fiscal year beginning July 1, 2001, the limitation on the transfer of funds in this subsection (a) shall be increased to seventeen million dollars (\$17,000,000);

(C) For the fiscal year beginning July 1, 2002, the limitation on the transfer of funds in this subsection (a) shall be increased to nineteen million dollars (\$19,000,000); and

(D) For the fiscal year beginning July 1, 2003, and for all fiscal years thereafter, there shall be no limitation on the transfer of funds to the State Aid Road Fund.

(b)(1) All revenues deposited in the State Aid Road Fund shall be apportioned to each county as prescribed in § 27-72-309 for the distribution of mileage on the state aid road system among the various counties.

(2) The apportioned funds shall remain for a period of two (2) years from the date they are apportioned.

(3) Any unused funds shall be returned to the State Aid Road Fund for redistribution in accordance with the above formula.

(4) For a county to receive these funds, they must be matched in the ratio of ninety percent (90%) state aid road funds to not less than ten percent (10%) county matching funds, and the county must comply with all provisions of this subchapter.

**History.** Acts 1973, No. 445, § 13; 1975, No. 607, § 3; 1975 (Extended Sess., 1976), No. 1037, § 2; 1983, No. 467, § 1; 1985, No. 996, § 1; A.S.A. 1947, § 76-459; reen. Acts 1987, No. 863, § 2; Acts 1993, No. 670, § 1; 1999, No. 1028, § 5.

**A.C.R.C. Notes.** This section was reenacted by Acts 1987, No. 863, § 2. Acts 1987, No. 834 provided that 1987 legislation reenacting acts passed in the 1976 Extended Session should not repeal any other 1987 legislation and that such other

legislation would be controlling in the event of conflict.

**Publisher's Notes.** Acts 1999, No. 1028, § 1 provided: "This act may be referred to and cited as the 'Arkansas Distillate Special Fuel Excise Tax Act of 1999' and the 'Motor Fuel Excise Tax Act of 1999'."

**Cross References.** State Highway Special Construction Account, § 27-70-103.

## **27-72-306. County Supplement Fund Account.**

In the event that any county desires to provide funds in excess of the minimum matching requirements as provided in § 27-72-305, the Treasurer of State shall credit the amount above matching requirements to the County Supplement Fund Account of the State Aid Road Fund, there to be used as provided by law.

**History.** Acts 1973, No. 445, § 21; A.S.A. 1947, § 76-459.1.

## **27-72-307. Expenses paid prior to allocation.**

The salaries of the state aid engineer, his or her assistants, and all other employees of the Division of State Aid Road Construction, as well as all other expenses incurred by the Division of State Aid Road Construction in carrying out the provisions of this subchapter, shall be

paid from the State Aid Road Fund in the State Treasury prior to allocation to the several counties.

**History.** Acts 1973, No. 445, § 8; A.S.A. 1947, § 76-454.

### **27-72-308. Eligibility for state aid — Notice.**

(a) Before any county shall be eligible to receive the benefits of the provisions of this subchapter, the county, through its county judge, shall agree to comply with the terms, provisions, and limitations of this subchapter.

(b) When any county shall have met the requirements of this subchapter and shall have become eligible for state aid, the state aid engineer, as soon as practicable, shall notify such county in writing of such eligibility and that its proportionate part of any state funds allocated to the county for state aid may be utilized for construction on the state aid system in the manner provided in this subchapter.

**History.** Acts 1973, No. 445, §§ 5, 11; A.S.A. 1947, §§ 76-451, 76-457.

### **27-72-309. Allocation of state aid.**

(a) State aid roads in the several counties shall receive state aid in the manner and under the terms and conditions set out in this subchapter.

(b) The state aid system shall be allocated to the several counties of the state on a mileage basis in the following proportions:

(1) Fifty percent (50%) to be divided equally among the seventy-five (75) counties;

(2) Twenty-five percent (25%) to be divided in the proportion that the area of each county bears to the area of the state; and

(3) Twenty-five percent (25%) to be divided in the proportion that the rural population of each county bears to the rural population of the state as shown by the most recent federal decennial census.

**History.** Acts 1973, No. 445, § 7; A.S.A. 1947, § 76-453.

### **27-72-310. Contracts for work to be performed.**

(a) All proposals covering work to be performed on state aid roads in each county in this state shall be under contract let and approved by the State Highway Commission upon a request from the county judge of the county and in accordance with the procedures prescribed in § 27-67-206, and other laws of this state pertaining to contracts for the construction of state highways, which laws shall be equally applicable to all contracts let by the commission for the construction of state aid roads under this subchapter.

(b) The county judge of any county is authorized to submit bids for work to be performed on state aid roads under the provisions of this subchapter, and nothing contained herein shall be construed to limit or restrict the right of a county judge to submit bids for work to be performed by county forces so long as the bids are in accordance with procedures prescribed in § 27-67-206, and the aggregate cost thereof does not exceed one hundred sixty-five thousand dollars (\$165,000).

**History.** Acts 1973, No. 445, § 12; 1985, No. 996, § 2; A.S.A. 1947, § 76-458; Acts 1997, No. 1091, § 1; 2007, No. 164, § 1.

**Amendments.** The 2007 amendment substituted “one hundred sixty-five thousand dollars (\$165,000)” for “one hundred fifteen thousand dollars (\$115,000)” in (b).

### **27-72-311. Conditions for use of state aid.**

Any county shall be entitled to receive state aid and to expend state aid moneys in conjunction with moneys furnished by said county on state aid roads in such county on projects approved for construction in such county provided:

(1) The state aid system in the county has been designated and approved as provided in this subchapter;

(2)(A) The county has employed or retained a county engineer who is a registered professional engineer to act for and on behalf of the county as a whole.

(B) However, if any county judge is a registered professional engineer, the county judge may perform the duties provided herein for the county engineer.

(C) Any county may contract with the Arkansas State Highway and Transportation Department for engineering services in lieu of employing or retaining a county engineer.

(D) The cost of employing or retaining a county engineer, or contracting with the Arkansas State Highway and Transportation Department for engineering services, shall be paid from the county road funds of the county and shall not be payable from the County Aid Road Fund.

(E) Engineering costs on federal-aid projects may be included as a cost item of such projects;

(3) An annual program shall have been filed by the county with the Division of State Aid Road Construction and approved by the state aid engineer and in accordance with the uniform design standards and specifications set up by the state aid engineer. However, the program may be modified or revised in whole or in part by the state aid engineer, with the agreement of the county involved; and

(4) The county has complied with all rules and regulations promulgated by the state aid engineer.

**History.** Acts 1973, No. 445, § 10; A.S.A. 1947, § 76-456.



**27-72-312. Use of state aid.**

(a) Funds deposited in the State Aid Road Fund shall be used exclusively for the construction, reconstruction, and improvements of roads on the state aid road system, except as otherwise provided in this subchapter.

(b) Not more than twenty-five percent (25%) of a county's allotment from the fund shall be used for the purposes of resealing.

(c) No funds shall be spent hereunder on any project which shall not culminate directly in a paved hard-surfaced road.

(d) No such funds shall be used for maintenance of state aid roads.

(e) All fund expenditures hereunder shall be made after publication of notice to bidders of the date for final reception of bids and the address at which specifications can be acquired. After a public opening of the bids thereon, all contracts shall be awarded to the lowest and best bidder.

**History.** Acts 1973, No. 445, § 14; 1975, No. 607, § 4; 1975 (Extended Sess., 1976), No. 1037, § 3; A.S.A. 1947, § 76-460; reen. Acts 1987, No. 863, § 3.

**A.C.R.C. Notes.** This section was reenacted by Acts 1987, No. 863, § 3. Acts 1987, No. 834 provided that 1987 legislation reenacting acts passed in the 1976 Extended Session should not repeal any other 1987 legislation and that such other

legislation would be controlling in the event of conflict.

**Publisher's Notes.** Acts 1983, No. 108 established a procedure by which, during the 1983 and 1984 fiscal years, certain state aid road funds could be used by counties suffering from the December 1982 flooding disaster to help them to provide sufficient matching funds to obtain federal disaster relief.

**27-72-313. Use of federal-aid secondary road funds.**

(a) Each year, fifty percent (50%) of all federal-aid secondary road funds allocated to this state shall be set aside by the State Highway Commission for use on county secondary road projects on the federal-aid secondary roads that are included in the state aid road system.

(b) County funds are to be matched in accordance with the applicable federal law relative thereto.

(c) No federal-aid secondary funds shall be used to match any revenue-sharing funds appropriated hereunder.

(d) Federal-aid secondary road funds that are not committed for use on county secondary federal-aid road projects during any current two-year period shall revert to, and may be used by, the Arkansas State Highway and Transportation Department on state secondary highways.

**History.** Acts 1973, No. 445, § 14; 1975, No. 607, § 4; 1975 (Extended Sess., 1976), No. 1037, § 3; A.S.A. 1947, § 76-460; reen. Acts 1987, No. 863, § 3.

**A.C.R.C. Notes.** This section was reenacted by Acts 1987, No. 863, § 3. Acts

1987, No. 834 provided that 1987 legislation reenacting acts passed in the 1976 Extended Session should not repeal any other 1987 legislation and that such other legislation would be controlling in the event of conflict.

**27-72-314. Disaster counties.**

(a)(1) It is the intent and purpose of this section to make available moneys in the State Aid Road Fund to the credit of disaster counties to be used to restore and repair county bridges or roads which are destroyed or which have suffered extensive damage as a result of tornadoes, heavy rainfall, flooding conditions, or other natural disasters occurring after December 1, 2002, and to provide, together with county funds, the necessary matching moneys required to enable the disaster counties to obtain federal disaster relief funds for the projects.

(2) Only counties designated by the appropriate federal or state official as disaster counties for public assistance shall be authorized to use moneys in the fund under the matching provisions and for the purposes set forth in this section.

(3) All other moneys deposited in the fund shall be used solely on the matching basis and for the purposes set forth in §§ 27-72-301, 27-72-305, 27-72-312, 27-72-313, and 27-72-315.

(b)(1) Notwithstanding the provisions of §§ 27-72-301, 27-72-305, 27-72-312, 27-72-313, and 27-72-315, a county that has been determined by the appropriate federal or state official as being a disaster county for public assistance due to tornadoes, excessive rainfall, flooding conditions, or other natural disasters occurring after December 1, 2002, shall be eligible to receive state aid road funds credited to the account of the disaster county on a basis of ninety percent (90%) state aid road funds to not less than ten percent (10%) county matching funds.

(2) Funds distributed to a disaster county under the special matching provisions of this subsection shall be used solely for the restoration or repair of county bridges or roads destroyed or which suffered extensive damage as a result of tornadoes, heavy rainfall, flooding conditions, or other natural disasters occurring after December 1, 2002, regardless of whether the roads or bridges are a part of the state aid system of county roads.

(c) In addition to the uses provided for in subsection (b) of this section, funds distributed to a disaster county under the matching provisions of this section may be used to provide the necessary matching funds required to match federal disaster relief funds available for the restoration or repair of county bridges or roads which are destroyed or extensively damaged as a result of tornadoes, heavy rainfall, flooding conditions, or other natural disasters occurring after December 1, 2002, regardless of whether the roads or bridges are a part of the state aid system of county roads.

**History.** Acts 1985, No. 255, §§ 1-3; A.S.A. 1947, §§ 76-472 — 76-474; Acts 2003, No. 83, § 1; 2003, No. 1186, § 1.

**27-72-315. Rights-of-way — Exception.**

(a) All rights-of-way required on state aid road projects shall be acquired by the county, and any cost of rights-of-way shall not be considered a part of the cost of any project contemplated by this subchapter.

(b) The costs of reconstructing fencing, and the construction of property access passages shall not be considered as rights-of-way costs but shall be considered as a component of project cost.

**History.** Acts 1973, No. 445, § 14; 1975, No. 607, § 4; 1975 (Extended Sess., 1976), No. 1037, § 3; A.S.A. 1947, § 76-460; reen. Acts 1987, No. 863, § 3.

**A.C.R.C. Notes.** This section was reenacted by Acts 1987, No. 863, § 3. Acts

1987, No. 834 provided that 1987 legislation reenacting acts passed in the 1976 Extended Session should not repeal any other 1987 legislation and that such other legislation would be controlling in the event of conflict.

**27-72-316. Road maintenance by county — Failure to maintain.**

(a) It shall be the duty of each county to properly maintain all state aid roads in their respective counties after construction of any such roads with state aid moneys.

(b)(1) If essential maintenance is not properly and regularly carried on, in the opinion of the state aid engineer, then notice thereof shall be given in writing to the county judge in default.

(2) If maintenance is not done and continued within sixty (60) days from date of notice, then the state aid engineer may proceed to have done the necessary maintenance and repair work on the road and charge the work to any funds in the State Aid Road Fund in the State Treasury allocated to the county.

(3) If failure to maintain continues, then the county shall be no longer eligible for state aid until proper maintenance is resumed by it. Notice of withdrawal of state aid shall be duly given the Auditor of State and Treasurer of State. However, such ineligibility shall not affect payment from the State Aid Road Fund of progress and final estimates on contracts awarded prior to notice of ineligibility.

(c) When any county road, or sections of county roads constructed under the provisions of this subchapter, as amended, is within an area annexed to any first or second-class city or incorporated town, the county shall thereafter be relieved of the responsibility for maintaining the road or sections of roads as required in this subchapter, and the responsibility for maintenance thereof shall be transferred, at the time of annexation, to the annexing city or incorporated town.

(d) Whenever any county is ineligible for state aid under the provisions of this subchapter for a continuous period of five (5) years, then the county shall forfeit and no longer be entitled to any part of the funds in the State Aid Road Fund theretofore allocated to it. The balance of such funds as theretofore allocated to it shall be reallocated pro rata among all other eligible counties in the same relative proportions as those specified for distribution of funds to the respective counties.



**History.** Acts 1973, No. 445, § 15; 1985, No. 553, § 1; A.S.A. 1947, § 76-461.

### **27-72-317. County Road Construction and Maintenance Revolving Fund.**

(a) There is created and established on the books of the Treasurer of State, Auditor of State, and Chief Fiscal Officer of the State, in the State Treasury, a fund to be designated and known as the County Road Construction and Maintenance Revolving Fund, the exclusive jurisdiction for the administration of which is vested in the Chief Fiscal Officer of the State, subject, however, to the limitations, conditions, uses, and purposes hereinafter prescribed.

(b) For each fiscal year, the Treasurer of State and Auditor of State, from time to time shall transfer upon their books of record, upon certification by the Chief Fiscal Officer of the State, from the Budget Stabilization Trust Fund to the County Road Construction and Maintenance Revolving Fund, sums of money as may be required to accomplish the purposes of this act. In no event and at no time shall the accumulative transfers in the total exceed the sum of two million five hundred thousand dollars (\$2,500,000).

**History.** Acts 1975, No. 607, § 1; A.S.A. 607, codified as §§ 27-72-301, 27-72-305, 1947, § 76-461.1. 27-72-312, 27-72-313, 27-72-315, 27-72-

**Meaning of "this act".** Acts 1975, No. 317 — 27-72-319.

### **27-72-318. County highway revenue estimates.**

(a) For each fiscal year, it shall be the duty of the Chief Fiscal Officer of the State to prepare and file quarterly statements setting forth an estimate of the total amount of highway revenues and other state revenues made available by Act 445 of 1973, and all other laws providing state resources for and to county governments for road construction, improvements, and betterments made within the spirit of Act 445 of 1973, for the express use of the several counties of the state and apportioned to the several counties during the then-fiscal year, with the statements to be prepared and filed on or before July 10, October 10, January 10, and April 10 of the fiscal year.

(b) Each statement shall be designated and known as the "Official Estimate of County Highway Revenues Distribution" for the then-current fiscal year, and copies shall be filed with the Chief Fiscal Officer of the State, the Auditor of State, the Treasurer of State, and each of the several county courts.

(c) In addition to the estimate of the total amounts of county road funds by legislated source categories to be collected and apportioned, the Chief Fiscal Officer of the State shall incorporate in each official estimate a listing of all counties and an estimate of the amount of county road funds by legislated source category to be credited to each county under the current provisions of the Revenue Stabilization Law, § 19-5-101 et seq.

(d) In preparing each official estimate of county highway revenues distribution, the Chief Fiscal Officer of the State shall begin with a basic amount arrived at in the manner hereinafter prescribed. To this amount he or she shall add or from this amount he or she shall subtract his or her estimate of such net increase or net decrease in county road funds as may be affected by various factors, as determined by the Chief Fiscal Officer of the State, including, but not limited to, changes in the laws pertaining to tax rates and exemptions, administration of tax laws, and distribution of revenues. The basic amount of county road funds shall be ascertained as follows:

(1) The July estimate shall be the amount of the next-preceding fiscal year's county road funds, increased or decreased by that certain percentage determined by the average of percentage changes in the amount of the total county road funds by legislated source category of each of the three (3) preceding fiscal years in relation to its preceding fiscal year; and

(2) The October, January, and April estimates shall be the total amount of county road funds by legislated source category collected in the preceding months of the then-current fiscal year plus the total amount of county road funds by legislated source category collected in all of the other months of the preceding fiscal year, increased or decreased by that certain percentage determined by the average of percentage changes in the collections during all other months of each of the three (3) preceding fiscal years in relation to the same other months of its preceding fiscal years.

**History.** Acts 1975, No. 607, § 2; 1975 (Extended Sess., 1976), No. 1037, § 1; A.S.A. 1947, § 76-461.2; reen. Acts 1987, No. 863, § 1.

**A.C.R.C. Notes.** This section was reenacted by Acts 1987, No. 863, § 1. Acts 1987, No. 834 provided that 1987 legislation reenacting acts passed in the 1976 Extended Session should not repeal any

other 1987 legislation and that such other legislation would be controlling in the event of conflict.

**Publisher's Notes.** Act 445 of 1973, referred to herein, is codified as §§ 26-55-205, 26-56-201, 27-70-103, 27-70-205, 27-72-301 — 27-72-313, 27-72-315, and 27-72-401 — 27-72-411.

### **27-72-319. Advance transfers from revolving fund — In general.**

(a) Moneys at any time in the County Road Construction and Maintenance Revolving Fund shall be available to the Chief Fiscal Officer of the State only for the purposes of making advance transfers to the several county highway funds, state aid road funds, federal-aid secondary road funds, and all other provisions of county road construction assistance which may be enacted by the General Assembly and governed by the Revenue Stabilization Law, § 19-5-101 et seq.

(b) The Chief Fiscal Officer of the State shall be guided by §§ 27-72-320 and 27-72-321, with respect to the making of advance transfers of moneys from the County Road Construction and Maintenance Revolving Fund to other State Treasury funds or fund accounts which, under the provisions of this section, are eligible to receive advances.



**History.** Acts 1975, No. 607, § 2; 1975 (Extended Sess., 1976), No. 1037, § 1; A.S.A. 1947, § 76-461.2; reen. Acts 1987, No. 863, § 1.

**A.C.R.C. Notes.** This section was reenacted by Acts 1987, No. 863, § 1. Acts

1987, No. 834 provided that 1987 legislation reenacting acts passed in the 1976 Extended Session should not repeal any other 1987 legislation and that such other legislation would be controlling in the event of conflict.

## **27-72-320. Advance transfers to county highway funds.**

(a)(1) Advance transfers may be made to each of the several county highway funds from time to time during the fiscal year in amounts as may be requested by the several county courts and approved by the Chief Fiscal Officer of the State.

(2) The purpose of advance transfers as herein provided includes, but is not limited to, establishing a more consistent monthly revenue accruing to each of the several county highway funds when combining county highway aid with all other sources of county highway fund revenues and providing advance transfers for the purchase of capital equipment and materials utilized in county road construction and maintenance.

(3) However, the aggregate total amount of all transfers to each of the several respective county highway funds during any calendar quarter shall not exceed twenty-five percent (25%) of the estimated total amount of county highway aid funds to be credited to the respective fund for the current fiscal year, based on the then-current official estimate of county highway fund distribution.

(4) In the event no advance transfer to the respective county highway funds is required by a respective county court, the county court shall be permitted to designate the dollar amounts and sequence of payments made to the respective county from the funds apportioned through the provisions of the State Apportionment Fund.

(b)(1) The full amount of all advance transfers made during any fiscal year under subsection (a) of this section shall be repaid during the same fiscal year by transferring moneys in equal payments to the County Road Construction and Maintenance Revolving Fund from moneys designated as county highway aid funds for each respective county receiving advance transfers. Should any condition of circumstance arise wherein the unencumbered cash balance in each respective county highway aid fund account maintained by the Treasurer of State at the end of the fiscal year is insufficient to repay the full amount of the balance owing the Road Revolving Fund, then the entire unencumbered cash balance in each respective county highway fund account shall be transferred to the Road Revolving Fund. The balance of any amounts then owing the Revolving Fund by a respective county shall be repaid from the first moneys thereafter credited to that county as county highway aid funds from the State Apportionment Fund. There shall be no exception to this mandate.

(2) For purposes of subsection (a) of this section, the term "unencumbered cash balance" means the respective fund account balance of each of the several counties as reflected by the Treasurer of State's records,



less the amount of all warrants legally chargeable to such accounts which are, at the time, outstanding and unpaid.

(c) The interfund transfers authorized to be made under subsection (a) of this section shall be made by the Treasurer of State upon certification of the Chief Fiscal Officer of the State at the request of each of the several county courts.

(d)(1) Advance transfers pursuant to subsection (a) of this section may be made to each of the several counties as may be requested by the several county courts and approved by the Chief Fiscal Officer of the State.

(2) Advance transfer requests shall be duly recorded as county court orders in each of the respective counties requesting advance transfers and shall be filed in a manner and form prescribed by the Chief Fiscal Officer of the State.

(3) Advance transfer requests may be filed only during the thirty-day period next succeeding the date of delivery of the tax books to the county collector, the beginning of a state fiscal year, and the third Monday in November of each year.

(4) The court order shall include a certification by the county court that the official revenue estimate as provided for in § 27-72-318 has been duly filed and recorded.

(5) For each calendar year, it shall be the duty of the county court of each of the several counties requesting advance transfers under the provisions of subsection (a) of this section to prepare and file annual statements setting forth therein an estimate of the total amount of county highway revenues and general fund revenues anticipated to accrue to each respective fund during the then-current calendar year or any part thereof.

(6) These statements shall be designated and known as the official estimates of county general and county highway fund accrual, and a copy shall be recorded with the county clerk.

(7) In addition to the estimates of the total revenue amounts anticipated to accrue to each respective fund, the county court shall incorporate in each official estimate a listing of all revenue sources and the dollar amounts anticipated to accrue from each source by month of the calendar year.

(8) The listing of revenue sources shall include, but not be limited to, ad valorem tax revenues, collector's commissions, treasurer's commissions, assessor's fund, fees, court fines and costs, state aid, and federal revenue-sharing.

(9) Monthly estimates shall be based on an analysis of the three (3) annual calendar year periods next preceding the current calendar year period.

**History.** Acts 1975, No. 607, § 2; 1975 (Extended Sess., 1976), No. 1037, § 1; A.S.A. 1947, § 76-461.2; reen. Acts 1987, No. 863, § 1.

**A.C.R.C. Notes.** This section was reenacted by Acts 1987, No. 863, § 1. Acts 1987, No. 834 provided that 1987 legislation reenacting acts passed in the 1976

Extended Session should not repeal any other 1987 legislation and that such other legislation would be controlling in the event of conflict.

**27-72-321. Advance transfers to county special purpose road accounts.**

(a)(1) Advance transfers may be made from time to time during the fiscal year to each of the several county special purpose road accounts maintained by the Treasurer of State.

(2) Special Purposes Road Accounts, as used in this section, shall include any and all county road construction provisions enacted by the General Assembly requiring a specified level of local, county, and cost matching funds, and shall include state aid road funds, federal-aid secondary road funds, and all other provisions of county special purpose road construction assistance which may be enacted by the General Assembly.

(3) Advance transfers may be made from time to time in such amounts as may be respectively requested by each of the several county courts.

(4) Advance transfer requests shall be duly recorded as county court orders in each of the respective counties and shall be filed in a manner and form prescribed by the Chief Fiscal Officer of the State.

(5) Requests shall be accompanied by a certified copy of all initiated contractual documentation or grant-in-aid award documentation required by the provisions of the applicable special purpose road construction assistance enacted by the General Assembly for which the advance transfer is requested.

(6) The contractual documentation or grant-in-aid award documentation shall specify the total dollar amount of the contract or award, the effective date of the contractual document, and the estimated date of termination or completion of all work specified in the contract or award.

(7) However, the aggregate amount of all advance transfers to each of the respective special purpose road construction accounts during any fiscal year shall not exceed fifty percent (50%) of the estimated total amount of county highway aid funds to be credited to each respective county for the current fiscal year, based on the then-current annual official estimate of county highway revenue distribution.

(b)(1) The full amount of all advance transfers authorized under subsection (a) of this section shall be repaid to the Road Revolving Fund in equal monthly installments from highway revenue moneys designated as county aid funds from the State Apportionment Fund for each of the respective counties receiving advance transfers.

(2) The repayment period may transcend one (1) or more fiscal years or one (1) or more calendar years. However, the full amount of all advance transfers authorized under subsection (a) of this section shall be repaid during the term of office of each of the respective county judges requesting such advance transfers as the county court of each of the several counties; all such transfers shall be repaid during the then-current appropriation biennium of the General Assembly.

(3) There shall be no exception to this mandate.

(c) The interfund transfers authorized to be made under subsection (a) of this section shall be made by the Treasurer of State upon certification of the Chief Fiscal Officer of the State at the request of each of the several county courts.

(d)(1) Advance transfers, pursuant to § 27-72-320(a), may be made from time to time and in such amounts as may be respectively requested by each of the several county courts.

(2) Advance transfer requests shall be duly recorded as county court orders in each of the respective counties and shall be filed in a manner and form prescribed by the Chief Fiscal Officer of the State.

**History.** Acts 1975, No. 607, § 2; 1975 (Extended Sess., 1976), No. 1037, § 1; A.S.A. 1947, § 76-461.2; reen. Acts 1987, No. 863, § 1.

**A.C.R.C. Notes.** This section was reenacted by Acts 1987, No. 863, § 1. Acts

1987, No. 834 provided that 1987 legislation reenacting acts passed in the 1976 Extended Session should not repeal any other 1987 legislation and that such other legislation would be controlling in the event of conflict.

#### SUBCHAPTER 4 — STATE AID STREETS

##### SECTION.

27-72-401. Definition.

27-72-402. Coordination with state aid road system.

27-72-403. Prohibited projects.

27-72-404. Receipt and expenditure of money.

27-72-405. State aid engineer.

27-72-406. Notice of municipal eligibility.

27-72-407. State Aid Street Account.

##### SECTION.

27-72-408. Apportionment and transfer of funds.

27-72-409. Prerequisite for allocations from account.

27-72-410. Expenditure requirements.

27-72-411. Street maintenance by municipality — Failure to maintain.

**Preambles.** Acts 1981, Nos. 363 and 522 contained identical preambles which read: "Whereas, Federal Revenue Sharing funds coming to the State of Arkansas, pursuant to the State and Local Fiscal Assistance Act of 1972, P.L. 92-512, as amended, have been terminated by Congress; and

"Whereas, such Congressional action has thereby terminated future additional funding from revenue sharing sources for the State Aid Street Program; and

"Whereas, the prompt release of outstanding uncommitted 'revenue sharing funds' in the State Aid Street Account for use in general street improvement and repair will be economic and efficient for the municipalities as a step toward the amelioration of their very burdensome problems in the construction and upkeep needs for their street programs;

"Now, therefore...."

**Effective Dates.** Acts 1975, No. 982, § 4: July 1, 1975. Emergency clause provided: "It is hereby found and determined by the Seventieth General Assembly that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two-year period; that the effectiveness of this Act on July 1, 1975, is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1975, could work irreparable harm upon the proper administration and providing of essential governmental programs. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health, and safety, shall



be in full force and effect from and after July 1, 1975."

Acts 1977, No. 241, § 5: Feb. 24, 1977. Emergency clause provided: "It is hereby found and determined by the Seventy-First General Assembly that in order to clarify the disposition of funds provided under the State and Local Fiscal Assistance Act of 1972, P.L. 92-512, as amended, by P.L. 94-488, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health, and safety, shall be full force and effect from and after its passage and approval."

Acts 1977, No. 809, § 6: Mar. 28, 1977. Emergency clause provided: "It is hereby found and determined by the Seventy-First General Assembly that in order to clarify the disposition of funds provided under the State and Local Fiscal Assistance Act of 1972, P.L. 92-512, as amended, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

Acts 1977 (1st Ex. Sess.), No. 23, § 5: Aug. 15, 1977. Emergency clause provided: "It is hereby found and determined by the Seventy-First General Assembly meeting in Special Session, that in order to clarify the allocation, distribution and use of Federal General Revenue Sharing moneys received by the State of Arkansas as are provided by the State and Local Fiscal Assistance Act of 1972, as amended, the immediate passage and adoption of this Act is necessary. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

Acts 1977 (1st Ex. Sess.), No. 24, § 6: Aug. 15, 1977. Emergency clause pro-

vided: "It is hereby found and determined by the Seventy-First General Assembly, meeting in an Extraordinary Session, that the immediate passage of this Act is necessary in order to make funds available to the State Aid Street Program. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1979, No. 199, § 6: Feb. 21, 1979. Emergency clause provided: "It is hereby found and determined by the Seventy-Second General Assembly that the immediate passage of the Act is necessary in order to make funds available to the State Aid Street Program. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1981, No. 363, § 3: Mar. 9, 1981. Emergency clause provided: "It is hereby found and determined by the Seventy-Third General Assembly that the immediate passage of this Act is necessary in order to make funds available to the municipalities. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1981, No. 522, § 3: Mar. 16, 1981. Emergency clause provided: "It is hereby found and determined by the Seventy-Third General Assembly that the immediate passage of this Act is necessary in order to make funds available to the municipalities. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

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## 27-72-401. Definition.

As used in this subchapter, unless the context otherwise requires, "state aid streets" means those streets or state highways determined to be on the Federal-Aid Urban System as defined in the Federal-Aid Highway Act of 1973 and any other public streets jointly selected by the

Arkansas State Highway and Transportation Department and responsible municipal officials as determined by the governing body. System mileage and modification will be in accordance with federal directives or concurrent state and municipal action.

**History.** Acts 1973, No. 445, Title II, § 1, as added by Acts 1975, No. 982, § 1; A.S.A. 1947, § 76-463.

**U.S. Code.** The Federal-Aid Highway Act of 1973, referred to in this section, is codified as 23 U.S.C. § 101 et seq.

### **27-72-402. Coordination with state aid road system.**

Every effort will be made to coordinate the establishment of the state aid system with the state aid street system to assure system continuity.

**History.** Acts 1973, No. 445, Title II, § 1, as added by Acts 1975, No. 982, § 1; A.S.A. 1947, § 76-463.

### **27-72-403. Prohibited projects.**

(a) No funds shall be spent hereunder on any project which shall not culminate directly in a paved hard-surfaced street. None of these funds shall be used for maintenance of state aid streets.

(b) Surface overlays of state aid streets are eligible for funding.

**History.** Acts 1973, No. 445, Title II, § 7, as added by Acts 1975, No. 982, § 1; A.S.A. 1947, § 76-469.

### **27-72-404. Receipt and expenditure of money.**

Any municipality shall be entitled to receive and to expend state aid street moneys in conjunction with moneys furnished by the municipality or available federal funds on state aid streets within the municipality, provided that:

(1) The state aid street system has been designated;

(2) The city has a legally adopted improvement code for city street construction or presents a street improvement plan prepared by a registered professional engineer;

(3) An annual street improvement program has been approved by the state aid engineer; and

(4) The state aid engineer determines that the street improvements are determined to be adequate based on the local conditions and are not in conflict with federal regulations.

**History.** Acts 1973, No. 445, Title II, § 2, as added by Acts 1975, No. 982, § 1; 1977, No. 809, § 1; 1977 (1st Ex. Sess.),

No. 24, § 2; 1979, No. 199, § 2; A.S.A. 1947, § 76-464.

**27-72-405. State aid engineer.**

The state aid engineer, under the direction of the Director of State Highways and Transportation, shall have the following powers and duties:

(1) Supervise and inspect all state aid street projects as the work progresses. Upon final completion of any project, the state aid engineer shall cause a final inspection to be made of such project for the purpose of determining whether the project has been completed satisfactorily in accordance with the plans and specifications. If satisfactorily completed, he shall approve payment of the final estimate on the project. The state aid engineer must certify partial and final completion of municipal street improvement utilizing state aid street funds. No progress or final estimate either on a contract or a force account project shall be paid unless approved in such manner by the state aid engineer, and on all contracts or force accounts projects a percentage of ten percent (10%) of each estimate thereon paid shall be retained until final acceptance of such project;

(2) Be subject to the direction of the State Highway Commission, provided that both the state aid engineer and the State Highway Commission shall be bound by the provisions hereof;

(3) Be responsible for notifying the local municipalities of the state aid street funds that are available for street improvements and certifying payment of the funds when satisfied that street work has been completed by the municipality or by contract; and

(4) Prepare and distribute procedures to the various municipalities under which the state aid street funding program will be administered and assist those municipalities desiring aid in developing street improvement standards, but no statewide street specifications will be issued.

**History.** Acts 1973, No. 445, Title II, § 3, as added by Acts 1975, No. 982, § 1; 1977, No. 809, § 4; A.S.A. 1947, § 76-465.

**27-72-406. Notice of municipal eligibility.**

When any municipality shall have met the requirements of this subchapter and shall have become eligible for state aid money, the state aid engineer, as soon as practicable, shall notify the municipality in writing of its eligibility and that its proportionate part of any state funds allocated to it for state aid may be utilized for construction or improvement on the state aid street system in the manner provided in this subchapter.

**History.** Acts 1973, No. 445, Title II, No. 24, § 3; 1979, No. 199, § 3; A.S.A. § 4, as added by Acts 1975, No. 982, § 1; 1947, § 76-466. 1977, No. 809, § 2; 1977 (1st Ex. Sess.),



**27-72-407. State Aid Street Account.**

There is created a State Aid Street Account of the State Highway and Transportation Department Fund, which shall consist of those federal general revenue-sharing moneys allocated and distributed in accordance with laws enacted by the General Assembly and there to be used as provided by the provisions of this subchapter, as amended.

**History.** Acts 1973, No. 445, Title II, § 5, as added by Acts 1975, No. 982, § 1; 1977, No. 241, § 2; 1977 (1st Ex. Sess.), No. 23, § 3; A.S.A. 1947, § 76-467.

**27-72-408. Apportionment and transfer of funds.**

(a) Apportionment of state aid street funds, as provided in § 27-72-407, shall be based upon the ratio that the population of each municipality bears to the total municipal population in the state, as determined by the last available census. However, no municipality shall be apportioned more than ten percent (10%) of the revenues.

(b) The balance of revenue-sharing and other funds in the State Aid Street Account standing to the credit of any municipality that does not have a project on which work is underway on April 1, 1981, or provisions made therefor, under the provisions of this subchapter shall be transferred to the street fund of that municipality, there to be used for the construction, maintenance, or repair of the streets of the municipality in such manner as the municipality shall deem appropriate and in accordance with pertinent federal laws and regulations. The municipality shall be forever released from further obligation to the Arkansas State Highway and Transportation Department under the provisions of this subchapter.

(c) Following completion of the work and final payment of all allowable costs on each municipality's projects that were in progress on or after April 1, 1981, under the provisions of this subchapter, the outstanding revenue-sharing and other moneys remaining in the State Aid Street Account to the credit of the municipality shall be transferred to the street fund of that municipality, there to be used for the construction, maintenance, or repair of the streets of the municipality in such a manner as the municipality shall deem appropriate and in accordance with pertinent federal laws and regulations. The municipality shall be forever released from further obligation to the Arkansas State Highway and Transportation Department under the provisions of this subchapter.

(d) In the event that revenue-sharing money shall become available to the municipalities under the provisions of this subchapter subsequent to the calendar year 1981, then the moneys shall be apportioned to the municipalities as above provided and paid to the municipalities in the same manner and for the same purposes as provided herein for the funds credited to the municipalities on April 1, 1981.

**History.** Acts 1973, No. 445, Title II, § 6, as added by Acts 1975, No. 982, § 1; 1977, No. 809, § 3; 1977 (1st Ex. Sess.), No. 24, § 4; 1979, No. 199, § 4; 1981, No.

363, § 1; 1981, No. 522, § 1; A.S.A. 1947, § 76-468.

### **27-72-409. Prerequisite for allocations from account.**

Except as otherwise provided in § 27-72-408(a), for a municipality to receive funds available in the State Aid Street Account of the State Highway and Transportation Department Fund, the funds must be matched in a ratio of seventy percent (70%) state aid street funds to not less than thirty percent (30%) municipal matching funds, and the municipality must comply with all provisions in this subchapter.

**History.** Acts 1973, No. 445, Title II, No. 24, § 4; 1979, No. 199, § 4; 1981, No. § 6, as added by Acts 1975, No. 982, § 1; 363, § 1; 1981, No. 522, § 1; A.S.A. 1947, 1977, No. 809, § 3; 1977 (1st Ex. Sess.), § 76-468.

### **27-72-410. Expenditure requirements.**

Expenditure of funds credited to the State Aid Street Account of the State Highway and Transportation Department Fund shall be in the following manner:

(1) The combined state and municipal funds may be utilized as matching funds for acquiring additional federal-aid funding for street work, unless specifically prohibited by federal law;

(2) All rights-of-way required on state aid street projects shall be acquired by the municipality, and any cost of rights-of-way shall not be considered a part of the cost of any project contemplated by this subchapter;

(3) No state aid street funds shall be released to the municipality until the municipality executes an annual agreement that the thirty percent (30%) matching share will be available and that the state aid street funds and matching funds will be carried as a special item on the municipal budget and utilized exclusively for street improvements authorized under this subchapter;

(4) Eligible street improvements can be performed by municipal forces or by contract administered by the municipality or Arkansas State Highway and Transportation Department. However, any projects in excess of fifty thousand dollars (\$50,000) shall be submitted to bid, and the lowest responsible bid shall be accepted; and

(5) The state aid street funds will be provided on a seventy percent (70%) cost-reimbursable basis as progress vouchers are issued or after the project is complete.

**History.** Acts 1973, No. 445, Title II, § 8, as added by Acts 1975, No. 982, § 1; A.S.A. 1947, § 76-470.

**27-72-411. Street maintenance by municipality — Failure to maintain.**

(a) It shall be the duty of each municipality to properly maintain all state aid streets within its jurisdiction that have been constructed or improved with state aid street funds.

(b) Failure to maintain such streets to an acceptable level determined by the state aid engineer can result in denial of future state aid street funds.

**History.** Acts 1973, No. 445, Title II, § 9, as added by Acts 1975, No. 982, § 1; A.S.A. 1947, § 76-471.

**SUBCHAPTER 5 — STATE AID BRIDGES****SECTION.**

27-72-501. Definition.

27-72-502. Approval — Expenditures.

**SECTION.**

27-72-503. Maintenance.

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**Effective Dates.** Acts 1989 (3rd Ex. Sess.), No. 24, § 4: Nov. 6, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly that counties desperately need additional revenues for constructing, replacing or reconstructing bridges; that this Act authorizes counties to expend State aid road funds for the replacement, construction, or reconstruction of certain bridges; that this Act will provide counties with the means of replacing or reconstructing

bridges which are in a dangerous condition; and that this Act should be given effect immediately in order to provide the means of constructing, replacing or reconstructing the bridges as soon as possible. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

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**27-72-501. Definition.**

For the purposes of this subchapter, the term "reconstruction" shall include not only a complete rebuilding or replacement of a bridge, but shall also include major renovations which will extend the service life of an existing bridge.

**History.** Acts 1989 (3rd Ex. Sess.), No. 24, § 1.

**27-72-502. Approval — Expenditures.**

(a) Upon approval of the State Highway Commission, the quorum court, and the county judge, any county may expend state aid road funds, as deposited in the State Aid Road Fund pursuant to § 27-72-305 and as administered pursuant to the policies of the Division of State Aid Road Construction of the State Highway and Transportation Depart-



ment, as provided in § 27-72-304, for the construction, replacement, or reconstruction of bridges located in incorporated towns with a population of five hundred (500) or less, according to the latest federal census, within the county and may use the state aid road funds as matching funds for state, federal, and local funds available for the replacement, construction, or reconstruction of the bridges, provided such bridges are on highways, roads, or streets in such incorporated towns which are extensions to “state aid roads”, as that term is defined in § 27-72-301.

(b) Such extensions shall not be included in the county’s allocated state aid system mileage total. Provided, further, such approval may be granted only on a project-by-project basis.

**History.** Acts 1989 (3rd Ex. Sess.), No. 24, § 1.

**27-72-503. Maintenance.**

Maintenance of such facilities, utility adjustments, and right-of-way acquisitions shall be the responsibility of the incorporated town.

**History.** Acts 1989 (3rd Ex. Sess.), No. 24, § 1.

**CHAPTER 73**  
**HIGHWAY SAFETY**

SUBCHAPTER.

- 1. GENERAL PROVISIONS.
- 2. FLASHING LIGHTS NEAR HIGHWAYS.
- 3. NOTICE OF SMOKE OBSTRUCTING HIGHWAY.

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**RESEARCH REFERENCES**

**Am. Jur.** 39 Am. Jur. 2d, Highways, § 337 et seq.      **C.J.S.** 40 C.J.S., Highways, § 254 et seq.

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**SUBCHAPTER 1 — GENERAL PROVISIONS**

SECTION.

27-73-101. Powers and duties of Governor.

SECTION.

27-73-102. Coordinator of public safety.

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**Effective Dates.** Acts 1967, No. 161, § 3: Feb. 28, 1967.

**27-73-101. Powers and duties of Governor.**

(a) The Governor, in addition to other duties and responsibilities conferred upon him or her by the Constitution and laws of this state, is empowered to contract and to do all of the things necessary in behalf of this state to secure the full benefits available to this state under the federal Highway Safety Act of 1966. In so doing, he or she shall cooperate with the federal and state agencies, private and public agencies, interested organizations, and with individuals to effectuate the purposes of that enactment and any and all subsequent amendments thereto.

(b) The Governor shall be the official of this state having the ultimate responsibility for dealing with the federal government with respect to programs and activities pursuant to the federal Highway Safety Act of 1966 and any amendments thereto.

(c) To that end, he or she shall coordinate the activities of any and all departments and agencies of this state and its subdivisions, relating thereto.

**History.** Acts 1967, No. 161, § 1; A.S.A. 1947, § 76-138. 1966, referred to in this section, is codified as 23 U.S.C. § 401 et seq.

**U.S. Code.** The Highway Safety Act of

**27-73-102. Coordinator of public safety.**

The Governor may administer this state’s highway safety programs through appropriate instrumentalities, departments, or agencies of the state or through a coordinator of public safety to be appointed by the Governor.

**History.** Acts 1967, No. 161, § 2; A.S.A. 1947, § 76-139.

**A.C.R.C. Notes.** Acts 1995, No. 551, § 4, provided: “The Highway Safety Program Advisory Council created by Arkansas Code 12-6-101 is transferred to the Arkansas Alcohol and Drug Abuse Coordinating Council pursuant to a type 3 transfer as defined in Arkansas Code 25-2-106.”

**Publisher’s Notes.** Acts 1981, No. 45, § 11, separated the highway safety program, authorized by §§ 27-73-101 and 27-

73-102, from the Department of Public Safety (abolished) and provided that it would thereafter function as a separate agency of state government, unless the Governor designated another agency or department of state government within which the program should be established. The section further provided that nothing in the act was to be construed to reduce any right which an employee of the highway safety program should have under any civil service or merit system.

**SUBCHAPTER 2 — FLASHING LIGHTS NEAR HIGHWAYS**

SECTION.

27-73-201. Intent.

27-73-202. Definition.

27-73-203. Penalty.

SECTION.

27-73-204. Prohibition.

27-73-205. Exemptions.

27-73-206. Zoning statutes subordinate.

**27-73-201. Intent.**

It is the intent of this subchapter:

(1) To enhance the safety of the public highways, roads, and streets and to safeguard the health, comfort, and convenience of motorists by restricting hazardous, distracting, and confusing devices along and immediately adjacent to the roadway; and

(2) To prohibit in particular the use of all oscillating, rotating, or flashing lights or devices of the type of, or which simulate or give the impression of being, an emergency vehicle, such as a police vehicle, fire truck, or ambulance, within a distance of two hundred feet (200') of a state highway, which is not involved in the regulation and operation of the traffic thereon in accordance with recognized and approved traffic engineering principles.

**History.** Acts 1973, No. 258, § 1; A.S.A. 1947, § 76-140.

**27-73-202. Definition.**

As used in this subchapter, unless the context otherwise requires, "oscillating, rotating, or flashing light or device" means any light of the type used on, or which simulates or gives the impression of being, an emergency vehicle such as a police car or vehicle, fire truck, ambulance, or other lawful emergency vehicle.

**History.** Acts 1973, No. 258, § 2; A.S.A. 1947, § 76-141.

**27-73-203. Penalty.**

(a) Any person violating the provisions of this subchapter shall be guilty of a misdemeanor. That person shall, upon conviction, be fined in an amount of not less than twenty-five dollars (\$25.00) nor more than two hundred fifty dollars (\$250) or be imprisoned in the county jail for not more than ninety (90) days, or be both so fined and imprisoned.

(b) Each day on which there is a violation shall constitute a separate offense and shall be punished accordingly.

**History.** Acts 1973, No. 258, § 5; A.S.A. 1947, § 76-144.

**27-73-204. Prohibition.**

It shall be unlawful for any person to locate within two hundred feet (200') of the rights-of-way of any public highway, road, or street in this state any advertising sign or device which involves movement of light beams or colored lights such as rotating beams of light, flashing or oscillating colored lights, and those which involve glaring or blinding impact upon the viewer, and which in any way infringe upon the vision of motor vehicle operators traveling upon or otherwise in use of the public highways, roads, and streets of this state, in a manner as to



demand, detract, or otherwise divert or confuse the attention of motor vehicle operators.

**History.** Acts 1973, No. 258, § 2; A.S.A. 1947, § 76-141.

**27-73-205. Exemptions.**

(a) Official devices located at airports, designated parking areas, transportation mode interchange points, depots, and similar public service facilities shall be exempt from the provisions of this subchapter.

(b) The provisions of this subchapter shall neither apply to any oscillating, rotating, or flashing railroad signal or safety light at any railroad crossing or upon any railroad right-of-way nor to the oscillating headlights on any railroad locomotive.

(c) The prohibition set out in § 27-73-204 does not apply to signs or devices with constant illumination and color, including those in which the only movement is a very slow, steady rotation of the entire body of the sign or advertising device.

**History.** Acts 1973, No. 258, §§ 1, 2; A.S.A. 1947, §§ 76-140, 76-141.

**27-73-206. Zoning statutes subordinate.**

This subchapter shall take precedence over any land use zoning statutes concerning devices regulated by this subchapter within the State of Arkansas.

**History.** Acts 1973, No. 258, § 3; A.S.A. 1947, § 76-142.

**SUBCHAPTER 3 — NOTICE OF SMOKE OBSTRUCTING HIGHWAY**

SECTION.

27-73-301. Flaggers or signs required —  
Notice to sheriff.

SECTION.

27-73-302. Action for damages.

**27-73-301. Flaggers or signs required — Notice to sheriff.**

(a)(1) Any person owning or controlling croplands, rangelands, grasslands, pastures, or stubble lands along any Arkansas state primary or secondary highways or along a federal or interstate highway in Arkansas and setting fire to those lands so as to cause smoke to obstruct those adjacent roads and highways shall post flaggers or shall post advisory signs along those roads and highways to warn the drivers of all motor vehicles of the obstructing smoke. The flaggers shall be stationed in plain view along the roads and highways which are obstructed by the smoke and shall carry a flag, flare, flashlight, or other warning device to warn motorists of the danger of the obstructing smoke.

(2) The advisory signs shall be posted along both sides of the highway in plain view and shall state “SMOKE AHEAD” to warn motorists of the danger of obstructing smoke.

(b) Further, any person owning or controlling croplands, rangelands, grasslands, pastures, or stubble lands along any Arkansas state primary or secondary highways or along a federal or interstate highway in Arkansas and setting fire to those lands shall notify the sheriff’s office of the county where the lands are located that a fire is to be set, the approximate time the fire is to be started, and the location of those lands to be burned.

**History.** Acts 1989, No. 756, § 1.

**Publisher’s Notes.** Acts 1989, No. 756, § 4, provided that the provisions of that act “shall be supplemental to any other laws now in effect relating to the burning of croplands, rangelands, grasslands, pastures, or stubble lands, and shall not repeal or modify such laws.”

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Survey, Agricultural Law, 12 U. Ark. Little Rock L.J. 597.

27-73-302. Action for damages.

In any cause of action for damages resulting from any obstructing smoke along a state or federal highway against any person who owns or controls lands which are burned, a person’s compliance or noncompliance with this subchapter shall be admissible in the proceeding.

**History.** Acts 1989, No. 756, § 2.

**Publisher’s Notes.** As to the applicability of related laws, see Publisher’s Notes, § 27-73-301.

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Survey, Agricultural Law, 12 U. Ark. Little Rock L.J. 597.

CHAPTER 74  
HIGHWAY BEAUTIFICATION

SUBCHAPTER.

- 1. GENERAL PROVISIONS.
- 2. OUTDOOR ADVERTISING — SIGNS, ETC. — IN GENERAL.
- 3. OUTDOOR ADVERTISING — SIGNS, ETC. MORE THAN 660 FEET FROM HIGHWAY.
- 4. CONTROL OF JUNKYARDS.
- 5. SCENIC EASEMENTS.

## CASE NOTES

## ANALYSIS

Constitutionality.

Purpose.

Immunity.

Legislative Intent.

**Constitutionality.**

In action seeking declaratory judgment that this chapter was unconstitutional, where plaintiffs did not make any reasonable projection of losses in produce sales, plaintiffs failed to show any irreparable injury suffered by peach and apple growers whose right to advertise had been limited by valid restrictions. *Yarbrough v. Arkansas State Hwy. Comm'n*, 260 Ark. 161, 539 S.W.2d 419 (1976).

Where plaintiffs, without seeking permits, erected advertising signs after the effective date of this chapter, plaintiffs' contention that the chapter violated the equal protection clause by providing compensation for owners of outdoor advertising devices existing prior to the effective date without providing compensation for individuals who erect the devices after that date was without merit. *Yarbrough v. Arkansas State Hwy. Comm'n*, 260 Ark. 161, 539 S.W.2d 419 (1976).

**Purpose.**

The purpose of this chapter is to promote the reasonable, orderly, and effective

display of outdoor advertising, to promote the safety and recreational value of public travel, and to preserve natural beauty. *Files v. Arkansas State Hwy. & Transp. Dep't*, 325 Ark. 291, 925 S.W.2d 404 (1996).

**Immunity.**

Since Arkansas has chosen, in part, to effect its policies with respect to this chapter through its municipalities, it was immune from liability for anticompetitive effects, if any, arising from its ordinances that imposed certain restrictions on the location and size of outdoor advertising signs within municipal boundaries. *Parks v. Donrey, Inc.*, 596 F. Supp. 347 (W.D. Ark. 1984).

**Legislative Intent.**

This chapter was adopted with the congressional directive of 23 U.S.C. § 131 et seq. in mind. *Files v. Arkansas State Hwy. & Transp. Dep't*, 325 Ark. 291, 925 S.W.2d 404 (1996).

This chapter was enacted in 1967 to bring Arkansas into conformance with the federal Highway Beautification Act and, in part, to avoid losing substantial amounts in federal highway funds. *Arkansas State Hwy. & Transp. Dep't v. Kidder*, 326 Ark. 595, 933 S.W.2d 794 (1996).

## SUBCHAPTER 1 — GENERAL PROVISIONS

## SECTION.

27-74-101. Title.

27-74-102. Definitions.

**Preambles.** Acts 1967, No. 640 contained a preamble which read: "Whereas, the Congress of the United States has enacted legislation in the Highway Beautification Act of 1965 which will cause substantial losses in federal-aid highway funds apportioned to Arkansas on or after January 1, 1968, unless the Arkansas General Assembly enacts conforming legislation (a) to regulate the erection and

maintenance of outdoor advertising signs, displays and devices in areas adjacent to the federal-aid Interstate and Primary Systems; (b) to regulate the establishment, use and maintenance of junkyards in such areas; and (c) to provide for the payment of full and just compensation upon the removal and relocation of outdoor advertising signs and junkyards; and "Whereas, the Congress of the United



States has made available additional federal funds for use in landscape and roadside development within federal-aid highway rights of way and for acquisition of interests and improvement of strips of land necessary for the restoration, preservation and enhancement of scenic beauty adjacent to such federal-aid highways;

"Now, therefore...."

**Effective Dates.** Acts 1967, No. 640, Art. 5: emergency failed to pass. Emergency clause provided: "It is hereby found and determined by the General Assembly that recent Federal Highway legislation, particularly Public Law 89-285, approved October 22, 1965, and cited as the 'Highway Beautification Act of 1965' makes it necessary that the State of Arkansas provide for the regulation and control of outdoor advertising and junkyards or lose many millions of dollars of Federal-aid Highway funds greatly needed and required in this state to construct and maintain a suitable and efficient highway system; and it being further found and determined that the erection and maintaining of outdoor advertising and the establishment and maintenance of junkyards along the Federal-aid Interstate and Primary Highways of this state, unless controlled, mar the natural scenic beauty along such highways; and it being further found and determined that landscaping, scenic enhancement and rest and recreation areas adjacent to all Federal-aid Highways of this state are needed for the accommodation and enjoyment of our citizens and for the attraction of tourists, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and

effect from and after its passage and approval." Approved Apr. 6, 1967.

Acts 1993, No. 554, § 6: Mar. 16, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly that it is necessary for the State of Arkansas to continue to beautify the landscape along the scenic highways in the State; that the amendments contained in this act are necessary in order for the State to be eligible to participate in a federally-aided Scenic Byway Program from which funds are available for the needed improvements to the State's scenic byways; and that the immediate effectiveness of this act is necessary to allow the State to take full advantage of the federal-aid funds. Therefore an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1993, No. 691, § 6: Mar. 24, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly that the amendments contained in this act are necessary in order for the State of Arkansas to be eligible to participate in a federally-aided Scenic Byway program which federal funds may be utilized for much needed improvements to the State's scenic byways and only by the immediate effectiveness of this act may the State take full advantage as soon as possible of such federal-aid funds. Therefore, an emergency is hereby declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

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## 27-74-101. Title.

This chapter may be called the "Arkansas Highway Beautification Act".

**History.** Acts 1967, No. 640, § 1; A.S.A. 1947, § 76-2501.

**27-74-102. Definitions.**

As used in this chapter, unless the context otherwise requires:

(1) "Information center" means an area or site established, operated, and maintained at a safety rest area for the purpose of informing the public of places of interest within the State of Arkansas and providing such other information as the State Highway Commission may deem desirable;

(2) "Interstate system" or "interstate" means that portion of the National System of Interstate and Defense Highways located within this state, as officially designated or as may hereafter be designated by the commission and approved by the United States Secretary of Transportation, pursuant to the provisions of Title 23 of the United States Code;

(3) "Motorist services directional sign" means a sign giving directional information about goods and services in the interest of the traveling public, including, but not limited to:

(A) Places of public lodging;

(B) Places where food is served to the public on a regular basis;

(C) Places where automotive fuel or emergency automotive repair services, including truck stops, are regularly available to the public;

(D) Educational institutions;

(E) Places of religious worship;

(F) Public or private recreation areas, including campgrounds, resorts, and attractions, natural wonders, wildlife and waterfowl refuges, and nature trails;

(G) Plays, concerts, and fairs;

(H) Antique shops; and

(I) Agricultural products in a natural state, including vegetables and fruit;

(4) "Outdoor advertising" means any outdoor sign, display, device, figures, painting, drawing, message, plaque, poster, billboard, or other thing which is designed, intended, or used to advertise or inform, any part of the advertising or informational contents of which is visible from any place on the main-traveled way of the interstate or primary highways;

(5) "Primary system" or "primary" means that portion of the federal-aid primary system located within this state, as officially designated or as may hereafter be designated by the commission and approved by the United States Secretary of Transportation, pursuant to the provisions of Title 23 of the United States Code;

(6) "Safety rest area" means an area or site established, operated, and maintained within or adjacent to the right-of-way by or under public supervision or control, for the convenience of the traveling public; and

(7) "Scenic byway" means a highway, or a portion of a highway, that has been designated a scenic byway by the commission in accordance with federal laws, regulations, and rules pertaining to scenic byways.



**History.** Acts 1967, No. 640, Art. 1, § 2; 2503; Acts 1993, No. 554, § 1; 1993, No. 1977, No. 386, § 2; A.S.A. 1947, § 76-691, § 1.

## SUBCHAPTER 2 — OUTDOOR ADVERTISING — SIGNS, ETC. — IN GENERAL

### SECTION.

- 27-74-201. Policy.
- 27-74-202. Nonconforming devices — Remedies.
- 27-74-203. Regulation.
- 27-74-204. Permitted advertising.
- 27-74-205. Removal — Deadline.
- 27-74-206. Removal — Directional sign exemption.
- 27-74-207. Removal — Notice to owner.
- 27-74-208. Removal — Authority generally — Compensation.

### SECTION.

- 27-74-209. Agreements with the United States.
- 27-74-210. Land predominantly used for residential purposes.
- 27-74-211. Regulations — Adoption and promulgation.
- 27-74-212. Time limit for action on application for permit.
- 27-74-213. Rest areas.

**Preambles.** Acts 1967, No. 640 contained a preamble which read: "Whereas, the Congress of the United States has enacted legislation in the Highway Beautification Act of 1965 which will cause substantial losses in federal-aid highway funds apportioned to Arkansas on or after January 1, 1968, unless the Arkansas General Assembly enacts conforming legislation (a) to regulate the erection and maintenance of outdoor advertising signs, displays and devices in areas adjacent to the federal-aid Interstate and Primary Systems; (b) to regulate the establishment, use and maintenance of junkyards in such areas; and (c) to provide for the payment of full and just compensation upon the removal and relocation of outdoor advertising signs and junkyards; and

"Whereas, the Congress of the United States has made available additional federal funds for use in landscape and roadside development within federal-aid highway rights of way and for acquisition of interests and improvement of strips of land necessary for the restoration, preservation and enhancement of scenic beauty adjacent to such federal-aid highways;

"Now, therefore...."

Acts 1979, No. 735 contained a preamble which read: "Whereas, Act 640 of 1967, as amended, is designed to provide for the reasonable and orderly regulation of the erection and maintenance of outdoor advertising signs and devices in areas adjacent to the National System of Interstate and Defense Highways, Fed-

eral Aid Primary Highways and other State Highways, in conformity with the provisions of U. S. Code Title 23, Section 131; and

"Whereas, Act 640 authorized the Arkansas Highway Commission to enter into appropriate agreement with the Secretary of Transportation concerning the regulation of outdoor advertising along said highways to assure proper implementation of and conformity with the provisions of U. S. Code Title 23, Section 131; and

"Whereas, the Commission has entered into such agreement with the Secretary but such agreement does not adequately define certain terms used in the agreement including the term "land predominantly used for residential purposes," and a more specific definition of this term is necessary to enable the Commission to effectively and efficiently implement and carry out the provisions of the agreement;

"Now, therefore...."

**Effective Dates.** Acts 1967, No. 640, Art. 5: emergency failed to pass. Emergency clause provided: "It is hereby found and determined by the General Assembly that recent Federal Highway legislation, particularly Public Law 89-285, approved October 22, 1965, and cited as the 'Highway Beautification Act of 1965' makes it necessary that the State of Arkansas provide for the regulation and control of outdoor advertising and junkyards or lose many millions of dollars of Federal-aid Highway funds greatly needed and required in this state to construct and main-



tain a suitable and efficient highway system; and it being further found and determined that the erection and maintaining of outdoor advertising and the establishment and maintenance of junkyards along the Federal-aid Interstate and Primary Highways of this state, unless controlled, mar the natural scenic beauty along such highways; and it being further found and determined that landscaping, scenic enhancement and rest and recreation areas adjacent to all Federal-aid Highways of this state are needed for the accommodation and enjoyment of our citizens and for the attraction of tourists, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval." Approved Apr. 6, 1967.

Acts 1979, No. 735, § 6: Apr. 6, 1979. Emergency clause provided: "It is hereby found and determined by the General Assembly that certain terms used in an agreement relating to outdoor advertising along Interstate and Federal-Aid Primary Highways entered into between the Arkansas Highway Commission and the Secretary of Transportation pursuant to the provisions of Act 640 of 1967, are not adequately defined in the agreement to enable the Arkansas Highway Commission to effectively administer the provisions of said agreement and the provisions of Act 640 of 1967; that the provisions of Section 4 of Article 1 of Act 640 of 1967 and the regulations adopted by the Commission pursuant to the provisions of said Section relating to the granting of permits for the erection and/or maintenance of outdoor advertising prescribe no time limitations within which the Commission is required to act on applications for such permits and that delay by the Commission in granting or denying such permits may result in serious hardship to applicants;

and that this Act should be given effect at the earliest possible date to alleviate said problems. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1993, No. 554, § 6: Mar. 16, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly that it is necessary for the State of Arkansas to continue to beautify the landscape along the scenic highways in the State; that the amendments contained in this act are necessary in order for the State to be eligible to participate in a federally-aided Scenic Byway Program from which funds are available for the needed improvements to the State's scenic byways; and that the immediate effectiveness of this act is necessary to allow the State to take full advantage of the federal-aid funds. Therefore an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1993, No. 691, § 6: Mar. 24, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly that the amendments contained in this act are necessary in order for the State of Arkansas to be eligible to participate in a federally-aided Scenic Byway program which federal funds may be utilized for much needed improvements to the State's scenic byways and only by the immediate effectiveness of this act may the State take full advantage as soon as possible of such federal-aid funds. Therefore, an emergency is hereby declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

## CASE NOTES

### Delegation of Authority.

This subchapter, in authorizing the State Highway Commission to establish a permit and enforcement mechanism for regulating outdoor advertising devices,

was not an unlawful delegation of legislative power to the commission because the General Assembly clearly declared the purpose of the regulations and defined the scope of authority delegated to the com-

mission. *Yarbrough v. Arkansas State Hwy. Comm'n*, 260 Ark. 161, 539 S.W.2d 419 (1976).

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### 27-74-201. Policy.

(a) The General Assembly finds and declares that the erection and maintenance of outdoor advertising signs, displays, and devices in areas adjacent to certain sections of the National System of Interstate and Defense Highways, and federal-aid primary and other state highways designated by the State Highway Commission in the Arkansas state highway system shall be controlled in accordance with the terms of this chapter and regulations promulgated pursuant thereto, in order to protect the public interest; to promote the public health, safety, and welfare; to preserve natural beauty; and to promote reasonable, orderly, and effective display of outdoor advertising in the State of Arkansas.

(b) The State of Arkansas finds and declares that the removal of certain directional signs, displays, and devices in certain specified areas lawfully erected under state law in force at the time of their erection which do not conform to the requirements of 23 U.S.C. § 131(c), which provide directional information about goods and services in the interest of the traveling public, and which were in existence on May 6, 1976, would work a substantial economic hardship in the defined areas.

**History.** Acts 1967, No. 640, Art. 1, § 1; 1977, No. 386, § 1; A.S.A. 1947, § 76-2502.

### CASE NOTES

#### **Purpose.**

The purpose of this chapter is to promote the reasonable, orderly, and effective display of outdoor advertising, to promote the safety and recreational value of public

travel, and to preserve natural beauty. *Files v. Arkansas State Hwy. & Transp. Dep't*, 325 Ark. 291, 925 S.W.2d 404 (1996).

### 27-74-202. Nonconforming devices — Remedies.

(a) The General Assembly finds and declares that outdoor advertising signs, displays, or devices which do not conform to the requirements of this subchapter, including those for which there was a failure to first secure permits for the erection of the signs, are nonconforming advertising devices.

(b) Therefore, the right is conferred upon the State Highway Commission to enforce the provisions of this subchapter by means of restraining order, mandatory injunction, or other appropriate remedy for the abatement of such nonconforming advertising devices.

**History.** Acts 1967, No. 640, Art. 1, § 9; A.S.A. 1947, § 76-2510.

**27-74-203. Regulation.**

(a) The erection and maintenance of outdoor advertising signs, displays, and devices in areas six hundred sixty feet (660') in width from the nearest edge of any right-of-way of any interstate, primary, or other state highway designated by the State Highway Commission shall be regulated in order to protect the public investment in these highways, to promote the public safety and welfare in the use of these highways, to encourage the recreational value of public travel, and to preserve the natural beauty along these highways.

(b) Therefore, no outdoor sign, display, or device shall be erected in these areas except as hereinafter provided and in accordance with regulations promulgated by the commission.

(c) Any person whose business or property has been injured by a final adverse decision from the commission shall be entitled to a judicial hearing de novo in the circuit court of any county in which the person resides or does business or in the Pulaski County Circuit Court if the interests affected by the decision of the commission are constitutionally or statutorily preserved, or preserved by private agreement, so that their enforcement is a matter of right.

**History.** Acts 1967, No. 640, Art. 1, § 3;  
A.S.A. 1947, § 76-2504; Acts 2001, No.  
800, § 1.

**CASE NOTES**

**Cited:** Files v. Arkansas State Hwy. &  
Transp. Dep't, 325 Ark. 291, 925 S.W.2d  
404 (1996).

**27-74-204. Permitted advertising.**

(a) With the exception of and excluding those highways, or portions of highways, which are designated by the State Highway Commission as scenic byways, nothing contained in this chapter shall prohibit the erection and maintenance of outdoor advertising signs, displays, and devices consistent with customary use within six hundred sixty feet (660') of the nearest edge of the right-of-way of interstate, primary, and other state highways designated by the commission:

(1) Within those areas which are zoned industrial or commercial under authority of the laws of this state; or

(2) Within those unzoned commercial or industrial areas which may be determined by agreement between the commission and the United States Secretary of Transportation.

(b) Neither shall these prohibitions apply to signs, displays, and devices:

(1) Advertising the sale or lease of property upon which they are located;

(2) Advertising activities conducted on the property upon which they are located;



(3) Which locate, identify, mark, or warn of the presence of pipelines, utility lines, or rail lines, and appurtenances thereto, including, but not limited to, markers used in maintenance, operation, observation, and safety; and

(4) Granted an exemption by the United States Secretary of Transportation pursuant to 23 U.S.C. § 131(o).

(c) The erection of outdoor advertising signs, displays, and devices along a scenic byway shall be limited to those permitted by 23 U.S.C. § 131(c).

**History.** Acts 1967, No. 640, Art. 1, § 5; 2506; Acts 1993, No. 554, § 2; 1993, No. 1977, No. 386, § 3; A.S.A. 1947, § 76- 691, § 2.

## CASE NOTES

### ANALYSIS

Constitutionality.  
Construction.  
Applicability.  
Permit Required.  
Zoning.

#### Constitutionality.

The exemption from regulation of those areas which were already heavily commercialized or industrialized did not deny equal protection to plaintiffs in agricultural areas because the classification to preserve pastoral scenery and eliminate disharmonious advertising had a substantial, fair, and reasonable relation to the object of the Highway Beautification Act, § 27-74-101 et seq. *Yarbrough v. Arkansas State Hwy. Comm'n*, 260 Ark. 161, 539 S.W.2d 419 (1976).

#### Construction.

Subsection (a) of this section and Ark. Reg. for the Control of Outdoor Adver. on Ark. Highways 1(H)(2), when construed together, prohibit billboards in areas where, although a commercial use existed, there also existed a predominantly residential use. *Lamar Outdoor Adver. v. Ark. Highway & Transp. Dep't*, 86 Ark. App. 279, 184 S.W.3d 461 (2004).

#### Applicability.

Advertising company's request to erect highway billboard on commercial property was properly denied where property was located in a residential subdivision, predominately residential, and subject to a bill of assurance limiting it to residential use. *Lamar Outdoor Adver. v. Ark. High-*

*way & Transp. Dep't*, 86 Ark. App. 279, 184 S.W.3d 461 (2004).

Arkansas Highway and Transportation Department's decision to deny the sign company's application for a billboard sign permit was proper as the proposed site was not located in a zoned or unzoned commercial or industrial area as required by subsection (a) of this section and the Regulations for Control of Outdoor Advertising on Arkansas Highways. *Seiz Co. v. Ark. State Highway Transp. Dep't*, 2009 Ark. 361, — S.W.3d — (2009), rehearing denied, 2009 Ark. LEXIS 581 (Sept. 10, 2009).

#### Permit Required.

Rotating billboard sign was unlawfully maintained where advertisers failed to obtain the appropriate permit on or after October 1, 1972, as required by state regulation. *Arkansas State Hwy. & Transp. Dep't v. Kidder*, 326 Ark. 595, 933 S.W.2d 794 (1996).

#### Zoning.

The State Highway and Transportation Department's may review limited commercial zoning decisions relating to outdoor advertising to determine validity; this fosters the purposes of this chapter and assures compliance with federal law. *Files v. Arkansas State Hwy. & Transp. Dep't*, 325 Ark. 291, 925 S.W.2d 404 (1996).

State zoning actions that are created primarily to permit outdoor advertising structures will not be recognized as valid for outdoor advertising control purposes. *Files v. Arkansas State Hwy. & Transp. Dep't*, 325 Ark. 291, 925 S.W.2d 404 (1996).

**27-74-205. Removal — Deadline.**

Any sign, display, or device lawfully erected which does not conform to this subchapter shall be required to be removed by the end of the fifth year after it becomes nonconforming under the provisions hereof.

**History.** Acts 1967, No. 640, Art. 1, § 6;  
A.S.A. 1947, § 76-2507.

**27-74-206. Removal — Directional sign exemption.**

(a) The State Highway Commission, upon receipt of a declaration, resolution, certified copy of an ordinance, or other clear direction from a community, board of county commissioners, municipality, county, city, a specific region or area of the state, or other governmental or quasi-governmental agency that removal of motorist services directional signs would cause an economic hardship in a defined area shall forward this declaration, resolution, or finding to the United States Secretary of Transportation for inclusion as a defined hardship area qualifying for exemption pursuant to 23 U.S.C. § 131(o).

(b) Any declaration or resolution submitted to the commission shall further find that the motorist services signs provide directional information about goods and services in the interest of the traveling public and shall request the retention in the specified areas by the state of directional motorist services signs as defined herein.

(c) The commission shall comply with all regulations issued both now and hereafter by the Federal Highway Administration necessary for application for the exemption provided in 23 U.S.C. § 131(o), provided that the motorist services directional signs were lawfully erected under state law at the time of their erection and were in existence on or prior to May 5, 1976.

**History.** Acts 1977, No. 386, § 4; A.S.A.  
1947, § 76-2507.1.

**27-74-207. Removal — Notice to owner.**

(a) The State Highway Commission shall give thirty (30) days' notice, by certified mail, to the owner of the land on which an advertising device is located to remove it if it is a prohibited device or cause it to conform to regulations if it is an authorized device.

(b) If the owner of the property fails to act within thirty (30) days as required in the notice, the commission shall remove the advertising device at the expense of the owner of the land.

**History.** Acts 1967, No. 640, Art. 1,  
§ 11; A.S.A. 1947, § 76-2512.

**27-74-208. Removal — Authority generally — Compensation.**

(a) The State Highway Commission is authorized and empowered to require the removal of all outdoor advertising signs, displays, and devices not in conformity with this subchapter, which right may be enforced by means of a mandatory injunction or other appropriate remedy.

(b) However, just compensation shall be paid upon the removal of the following outdoor advertising signs, displays, and devices:

(1) Those lawfully in existence on June 29, 1967;

(2) Those lawfully on any highway in this state made a part of the state highway system on or after October 22, 1965, and before June 29, 1967; and

(3) Those lawfully erected on or after June 29, 1967.

(c) Compensation shall be paid for the taking from the owner of any sign, display, or device, of all right, title, leasehold, and interest in any sign, display, or device, and the taking from the owner of the real property on which the sign, display, or device is located, of the right to erect and maintain any signs, displays, and devices thereon.

(d) No municipality, county, or other political subdivision shall remove or cause to be removed any legal outdoor advertising except outdoor advertising that encroaches upon the right-of-way, without paying just compensation therefor.

(e) This section shall have no effect on the ability of municipalities, counties, or other political subdivisions to regulate or control outdoor advertising on highways or arterials which are not part of the interstate or federal-aid primary systems.

**History.** Acts 1967, No. 640, Art. 1, § 7; 1981, No. 923, § 1; A.S.A. 1947, § 76-2508.

**CASE NOTES****Retroactive Applicability.**

Where municipal ordinances had already mandated that nonconforming billboards be altered or removed long before the 1981 amendment to this section, which requires compensation for the taking of these signs, this amendment could not be applied retroactively and, without

retroactive applicability of the amendment, the ordinances were not in contravention of state law. *Donrey Communications Co. v. City of Fayetteville*, 280 Ark. 408, 660 S.W.2d 900 (1983), cert. denied, 466 U.S. 959, 104 S. Ct. 2172, 80 L. Ed. 2d 555 (1984).

**27-74-209. Agreements with the United States.**

As provided by Title 23 of the United States Code, the State Highway Commission is authorized to enter into agreement, which agreement shall reflect customary use in the outdoor advertising industry as determined under § 27-74-211, with the United States Secretary of Transportation to control the erection and maintenance of outdoor advertising signs, displays, and devices in areas adjacent to those



sections of the federal-aid interstate and federal-aid primary highway systems lying in Arkansas and to take action in the name of the state to comply with any agreement.

**History.** Acts 1967, No. 640, Art. 1, § 8;  
A.S.A. 1947, § 76-2509.

### CASE NOTES

**Cited:** Arkansas State Hwy. & Transp.  
Dep't v. Kidder, 326 Ark. 595, 933 S.W.2d  
794 (1996).

#### **27-74-210. Land predominantly used for residential purposes.**

(a) It is the legislative intent and purpose of this section to specifically define a certain term used in the agreement entered into between the State Highway Commission and the United States Secretary of Transportation pursuant to the authority granted in this chapter, as amended, particularly the term "land predominantly used for residential purposes" as that term is used in enumerating exclusions in the definition of "unzoned commercial, business, or industrial areas," in order to clarify the terms of agreement and to enable the commission to more effectively and efficiently and uniformly administer the provisions of this chapter, as implemented by the agreement entered into between the commission and the United States Secretary of Transportation.

(b) As used in the agreement entered into between the commission and the United States Secretary of Transportation pursuant to the provisions of this chapter, "land predominantly used for residential purposes" means only those tracts of land within an unzoned commercial, business, or industrial area on a primary or interstate highway which are occupied by a building regularly and principally used as a residence and those tracts of land adjacent to those residential tracts which are under the same ownership as the residential tracts and which are actively used and maintained for residential purposes.

**History.** Acts 1979, No. 735, §§ 1, 2;  
A.S.A. 1947, §§ 76-2505.3, 76-2505.4.

### CASE NOTES

#### **In General.**

Residential subdivision that contained a commercially owned lot was predominantly residential as contemplated in this section; the area also had two residences and yards from two other residences. *Lamar Outdoor Adver. v. Ark. Highway & Transp. Dep't*, 86 Ark. App. 279, 184 S.W.3d 461 (2004).

Arkansas Highway and Transportation Department's decision to deny the sign

company's application for a billboard sign permit was proper as the proposed site was not located in a zoned or unzoned commercial or industrial area as required by subsection (a) of this section and the Regulations for Control of Outdoor Advertising on Arkansas Highways. *Seiz Co. v. Ark. State Highway Transp. Dep't*, 2009 Ark. 361, — S.W.3d — (2009), rehearing denied, 2009 Ark. LEXIS 581 (Sept. 10, 2009).

**27-74-211. Regulations — Adoption and promulgation.**

(a) After survey to determine existing outdoor advertising structures in this state and after public hearing, the State Highway Commission shall determine customary use in the display of outdoor advertising in this state with regard to size, lighting, and spacing in areas zoned commercial or industrial and in unzoned areas used for commercial or industrial purposes.

(b) The definition of an unzoned commercial or industrial area shall be determined by agreement between the commission and the United States Secretary of Transportation but shall be no more restrictive than that required by Title 23 of the United States Code. The commission shall then adopt and promulgate regulations governing the issuance of permits for the erection and maintenance of outdoor advertising coming within the purview of this chapter, consistent with the safety and welfare of the traveling public, and as may be necessary to carry out the policy of the state declared in this chapter consistent with customary usage, the purposes of this chapter, and in agreement with the United States Secretary of Transportation.

(c) In the event that federal statutes, rules, or regulations conflict with the provisions of §§ 27-74-210 — 27-74-212 or regulations promulgated thereunder, the commission is authorized to promulgate rules and regulations necessary to comply with federal law after first obtaining the advice of the Legislative Council thereon while pursuing, insofar as possible, the legitimate objectives of those sections.

**History.** Acts 1967, No. 640, Art. 1, § 4;  
1979, No. 735, § 4; A.S.A. 1947, §§ 76-  
2505, 76-2505.6.

**U.S. Code.** Control of outdoor advertis-  
ing, 23 U.S.C. § 131.

**CASE NOTES**

**Cited:** *Files v. Arkansas State Hwy. & Transp. Dep't*, 325 Ark. 291, 925 S.W.2d 404 (1996).

**27-74-212. Time limit for action on application for permit.**

(a) It is the intent and purpose of this section to require the State Highway Commission to act on each application for a permit for the erection and maintenance of outdoor advertising coming within the purview of this chapter within sixty (60) days after such application is filed with the commission to assure the prompt disposition of such applications and to avoid the unnecessary hardship and expense to applicants which could result from unreasonable delay in taking action on the applications.

(b) When an application is filed with the commission or the Arkansas State Highway and Transportation Department pursuant to § 27-74-211 or regulations adopted pursuant thereto for a permit to erect or maintain outdoor advertising, the commission or the department shall

either grant or deny such permit within sixty (60) days from the date on which the application was filed with the commission or the department.

**History.** Acts 1979, No. 735, §§ 1, 3; A.S.A. 1947, §§ 76-2505.3, 76-2505.5.

**27-74-213. Rest areas.**

In order to provide information in the specific interest of the traveling public, the State Highway Commission is authorized to maintain maps and to permit informational directories and advertising pamphlets to be made available at safety rest areas along the interstate, primary, and other state highways designated by the commission and to establish information centers in cooperation with the Department of Parks and Tourism at safety rest areas for the purpose of informing the public of places of interest within the state and providing other information as may be considered desirable.

**History.** Acts 1967, No. 640, Art. 1, § 10; A.S.A. 1947, § 76-2511.

**SUBCHAPTER 3 — OUTDOOR ADVERTISING — SIGNS, ETC. MORE THAN 660 FEET FROM HIGHWAY**

SECTION.

27-74-301. Nonconforming devices — Remedy.  
27-74-302. Limitations.

SECTION.

27-74-303. Removal — Authority generally — Compensation.

**U.S. Code.** The federal Highway Beautification Act of 1965, 23 U.S.C. § 131 et seq.

**Preambles.** Acts 1975, No. 999 contained a preamble which read: "Whereas, the Congress of the United States has enacted legislation by amending the Highway Beautification Act of 1965 which will cause substantial losses in Federal-Aid Highway Funds apportioned to Arkansas on or after July 1, 1975, unless the Arkansas General Assembly enacts conforming legislation: (a) regulating the erection and maintenance of outdoor advertising signs, displays and devices which are located more than 660 feet off the nearest edge of the right of way of Interstate and Primary or any other state highway designated by the Arkansas State Highway Commission, located outside urban areas, visible from the main traveled way of such highways and erected for the purpose of their message being read from such main traveled way; (b) providing removal and compensa-

tion authority for signs lawfully erected beyond 660 feet which do not conform to the provisions of this Act;

"Now, therefore...."

**Effective Dates.** Acts 1975, No. 999, § 4: Apr. 11, 1975. Emergency clause provided: "It is hereby found and declared that the strict enforcement of this Act is necessary to prevent the erection of signs, displays and devices beyond the present legal limitations and visible from the traveled right of way of the Interstate, Primary and other State Highways; that if this Act is not placed in effect forthwith, the State of Arkansas will lose substantial Federal funds for failure to comply with the Federal-Aid Highway Amendment of 1974; that the immediate enforcement of this Act is required for the public health, safety and welfare. Therefore, it is declared, for these reasons, that an emergency exists and this Act, being essential for the preservation of the public peace, safety and welfare, shall take effect and



be in force from and after its passage and approval."

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### **27-74-301. Nonconforming devices — Remedy.**

The General Assembly finds and declares that outdoor advertising signs, displays, or devices which are located more than six hundred sixty feet (660') off the nearest edge of the right-of-way, located outside of urban areas, visible from the main-traveled way of the interstate, primary, or other state highway designated by the State Highway Commission, and erected for the purpose of their messages being read from the main-traveled way and which do not conform to the provisions of this subchapter are nonconforming advertising devices; therefore, the right is conferred upon the commission to enforce the provisions of this subchapter by means of restraining order, mandatory injunction, or other appropriate remedy for the abatement of nonconforming advertising devices, displays, or signs.

**History.** Acts 1975, No. 999, § 3; A.S.A. 1947, § 76-2505.2.

### **27-74-302. Limitations.**

Notwithstanding any other provisions of § 27-74-203, signs, displays, and devices which are located more than six hundred sixty feet (660') from the nearest edge of the right-of-way of interstate and primary highways, outside of urban areas, visible from the main-traveled way of the highways and erected with the purpose of their message being read from the main-traveled way shall be limited to:

- (1) Directional and other official signs as defined herein;
- (2) Signs advertising the sale or lease of property on which they are located;
- (3) Signs advertising activities conducted on the property on which they are located; and
- (4) Signs, displays, and devices which locate, identify, mark, or warn of the presence of pipelines, utility lines, or rail lines and appurtenances thereto, including, but not limited to, markers used in maintenance, operation, observation, and safety.

**History.** Acts 1975, No. 999, § 1; A.S.A. 1947, § 76-2504.1.

### **27-74-303. Removal — Authority generally — Compensation.**

(a) The State Highway Commission is authorized and empowered to require the removal of all outdoor advertising signs, displays, and devices which do not conform to the provisions of this subchapter and which are lawfully erected beyond six hundred sixty feet (660') from the nearest edge of the right-of-way, located outside of urban areas, visible

from the main-traveled way of the interstate, primary, or any other state highway designated by the commission and erected with the purpose of their message being read from the main-traveled way.

(b) The right may be enforced by means of a mandatory injunction or other appropriate remedy. However, just compensation shall be paid upon the removal of signs, devices, and displays that were lawfully erected beyond six hundred sixty feet (660') of the right-of-way line of the interstate, primary, or other state highway. This compensation shall be paid for the taking from the owner of the sign, display, or device, and the taking of all right of title, leasehold, and interest in the sign, display, or device, and the taking from the owner of the real property on which the sign, display, or device is located, of the right to erect and maintain the signs, displays, and devices thereon.

**History.** Acts 1975, No. 999, § 2; A.S.A. 1947, § 76-2505.1.

#### SUBCHAPTER 4 — CONTROL OF JUNKYARDS

SECTION.

- 27-74-401. Policy.
- 27-74-402. Definitions.
- 27-74-403. Notice.
- 27-74-404. Enforcement.
- 27-74-405. Screening requirement.
- 27-74-406. Permitted junkyards.

SECTION.

- 27-74-407. Screening and removal — Compensation.
- 27-74-408. Agreements with the United States.
- 27-74-409. Highway Clean-up Grant Program.

**Preambles.** Acts 1967, No. 640 contained a preamble which read: "Whereas, the Congress of the United States has enacted legislation in the Highway Beautification act of 1965 which will cause substantial losses in federal-aid highway funds apportioned to Arkansas on or after January 1, 1968, unless the Arkansas General Assembly enacts conforming legislation (a) to regulate the erection and maintenance of outdoor advertising signs, displays and devices in areas adjacent to the federal-aid Interstate and Primary Systems; (b) to regulate the establishment, use and maintenance of junkyards in such areas; and (c) to provide for the payment of full and just compensation upon the removal and relocation of outdoor advertising signs and junkyards; and

"Whereas, the Congress of the United States has made available additional federal funds for use in landscape and roadside development within federal-aid highway rights of way and for acquisition of interests and improvement of strips of land necessary for the restoration, preser-

vation and enhancement of scenic beauty adjacent to such federal-aid highways;

"Now, therefore...."

**Effective Dates.** Acts 1967, No. 640, Art. 5: emergency failed to pass. Emergency clause provided: "It is hereby found and determined by the General Assembly that recent Federal Highway legislation, particularly Public Law 89-285, approved October 22, 1965, and cited as the 'Highway Beautification Act of 1965' makes it necessary that the State of Arkansas provide for the regulation and control of outdoor advertising and junkyards or lose many millions of dollars of Federal-aid Highway funds greatly needed and required in this state to construct and maintain a suitable and efficient highway system; and it being further found and determined that the erection and maintaining of outdoor advertising and the establishment and maintenance of junkyards along the Federal-aid Interstate and Primary Highways of this state, unless controlled, mar the natural scenic beauty along such highways; and it being

further found and determined that landscaping, scenic enhancement and rest and recreation areas adjacent to all Federal-aid Highways of this state are needed for the accommodation and enjoyment of our citizens and for the attraction of tourists, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval." Approved Apr. 6, 1967.

Acts 1989, No. 211, § 4: Feb. 24, 1989. Emergency clause provided: "It is hereby found and determined by the General As-

sembly that the effective control of junkyards in the State is essential to the public health, safety, and welfare; that the provisions of this Act are immediately needed for the accomplishment of this purpose and that only by giving immediate effect to this Act can these purposes be realized to the fullest possible extent. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

### CASE NOTES

**Cited:** Arkansas State Hwy. Comm'n v. Roark, 309 Ark. 265, 828 S.W.2d 843 (1992).

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### 27-74-401. Policy.

(a) The General Assembly finds and declares that the establishment and use and maintenance of outdoor junkyards in areas adjacent to certain sections of the National System of Interstate and Defense Highways, the primary and other state highways designated by the State Highway Commission shall be controlled in order to protect the public interest, to promote the public health, safety, and welfare, and to preserve natural beauty.

(b) The General Assembly further finds that junkyards which do not conform to the requirements of this chapter are public nuisances.

**History.** Acts 1967, No. 640, Art. 2, § 1; A.S.A. 1947, § 76-2513.

### CASE NOTES

**Cited:** Wright v. Arkansas State Hwy. Comm'n, 255 Ark. 158, 499 S.W.2d 606 (1973).

### 27-74-402. Definitions.

As used in this subchapter:

(1) "Automobile graveyard" means any establishment or place of business that is maintained, used, or operated for the storing, keeping, buying, or selling of five (5) or more wrecked, scrapped, ruined, or dismantled motor vehicles;

(2) "Junk" means old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber debris, and waste or junked, dismantled, or



wrecked automobiles, or parts thereof, or iron, steel, and other old or scrap ferrous or nonferrous materials; and

(3)(A) “Junkyard” means an establishment or place of business that is maintained, used, or operated for storing, keeping, buying, or selling junk or for the maintenance or operation of an automobile graveyard.

(B) The term “junkyard” shall also include garbage dumps and sanitary fills.

**History.** Acts 1967, No. 640, Art. 2, § 2;  
A.S.A. 1947, § 76-2514; Acts 1989, No.  
211, § 1; 2005, No. 2147, § 1.

### **27-74-403. Notice.**

Any person contemplating or planning the establishment of a junkyard is charged with notice of the provisions of this subchapter with respect to screening, relocation, removal, or disposal of such junkyards.

**History.** Acts 1967, No. 640, Art. 2, § 5;  
A.S.A. 1947, § 76-2517.

### **27-74-404. Enforcement.**

(a) The General Assembly finds and declares that junkyards and automobile graveyards that do not conform to the requirements of this subchapter are public nuisances.

(b) The provisions of this subchapter may be enforced by means of restraining order, mandatory injunction, or other appropriate remedy for the abatement of these public nuisances by:

(1) The State Highway Commission; or

(2) The circuit court of the county in which all or part of a junkyard or automobile graveyard is situated upon application by a city or county.

**History.** Acts 1967, No. 640, Art. 2, § 7;  
A.S.A. 1947, § 76-2519; Acts 2005, No.  
2147, § 2.

### **27-74-405. Screening requirement.**

(a) Except as otherwise herein provided, no junkyards shall be established, operated, or maintained after June 29, 1967, any portion of which is within one thousand feet (1000') of the nearest edge of the right-of-way of any interstate, primary, or other state highway designated by the State Highway Commission in the State of Arkansas unless the junkyards shall be screened by natural objects, plantings, fences, or other appropriate means so as not to be visible from the main-traveled way of the highway, or shall be removed from sight.

(b) The commission is authorized and directed to promulgate rules and regulations governing the location, planting, construction, and

maintenance, including materials used therein, of the screening and fencing required under this chapter.

**History.** Acts 1967, No. 640, Art. 2, § 3; A.S.A. 1947, § 76-2515.

### CASE NOTES

#### ANALYSIS

In General.  
Zoning.

#### In General.

Acts 1955, No. 212, which imposed a penalty of \$100 a day for each day a person kept or maintained five nonoperative automobiles within one-half mile of any paved highway, regardless of whether they could be seen or not, was held to be arbitrary and unreasonable in that it gave the person involved no opportunity at all to save his business by obstructing it from the view of the persons who travel the

highway in attempting to effect the act's intended purpose, which could have only been to protect the traveling public from unsightly views, which was an esthetic consideration. *Bachman v. State*, 235 Ark. 339, 359 S.W.2d 815 (1962) (decision under prior law).

#### Zoning.

An established junkyard cannot become a permitted junkyard and thereby avoid the screening requirements by subsequent zoning to industrial usage so as to come within the exception in § 27-74-406. *Arkansas State Hwy. Comm'n v. Roark*, 309 Ark. 265, 828 S.W.2d 843 (1992).

### 27-74-406. Permitted junkyards.

Nothing contained in this subchapter shall prohibit the establishment, maintenance, and operation of outdoor junkyards, automobile graveyards, and scrap metal processing facilities within one thousand feet (1000') of the nearest edge of the right-of-way of interstate or primary state highways:

- (1) Within those areas which are zoned industrial under authority of the laws of this state;
- (2) Within those unzoned industrial areas which may be determined by agreement between the State Highway Commission and the United States Secretary of Transportation; or
- (3) Within other areas, when effectively screened as not to be visible from any point on the main-traveled way of such interstate or primary state highway.

**History.** Acts 1967, No. 640, Art. 2, § 4; A.S.A. 1947, § 76-2516.

### CASE NOTES

#### Zoning.

An established junkyard cannot become a permitted junkyard and thereby avoid the screening requirements of this section by subsequent zoning to industrial usage. *Arkansas State Hwy. Comm'n v. Roark*, 309 Ark. 265, 828 S.W.2d 843 (1992).

The exemption for industrial zoning applies to zoning in existence on the effective date of the act. *Arkansas State Hwy. Comm'n v. Roark*, 309 Ark. 265, 828 S.W.2d 843 (1992).

**27-74-407. Screening and removal — Compensation.**

(a)(1) The screening of any junkyard by natural objects, plantings, fences, or other appropriate means, so as not to be visible from the main-traveled way of any interstate or primary state highway, may be required by:

(A) The State Highway Commission; or

(B) The circuit court of the county in which all or part of a junkyard or automobile graveyard is situated upon application by a city or county.

(2) The removal from sight of any junkyard not so screened that is visible from the main-traveled way of the interstate or primary state highway may be required by:

(A) The commission; or

(B) The circuit court of the county in which all or part of a junkyard or automobile graveyard is situated upon application by a city or county.

(b) When the commission determines that the topography of the land will not permit adequate screening or that the screening would not be economically feasible, then just compensation shall be paid for the relocation, removal, or disposal of the following junkyards:

(1) Those lawfully in existence on October 22, 1965;

(2) Those lawfully along any highway in this state made a part of the state highway system on or after October 22, 1965, and before June 29, 1967; and

(3) Those lawfully established on or after June 29, 1967.

(c) The commission is:

(1) Given the option of relocation, removal, or disposal of affected junkyards; and

(2) Also authorized to make such payments when in the best interests of the state.

(d) No compensation shall be paid for the relocation, removal, or disposal of any junkyards except those enumerated in this section.

**History.** Acts 1967, No. 640, Art. 2, § 5;  
A.S.A. 1947, § 76-2517; Acts 2005, No.  
2147, § 3.

**CASE NOTES****ANALYSIS**

Actions.  
Compensation.  
Evidence.  
Interest.  
Pleadings.  
Screening.

**Actions.**

An action under this section is in the nature of an eminent domain proceeding

and may constitute the taking of private property rights entitling the affected property owners to just compensation. *Foster v. Arkansas State Hwy. Comm'n*, 258 Ark. 176, 527 S.W.2d 601 (1975).

An action under this section requiring a junkyard owner to relocate his junkyard is an action in the nature of an eminent domain proceeding. *Foster v. Arkansas State Hwy. Comm'n*, 263 Ark. 62, 562 S.W.2d 298 (1978).



**Compensation.**

Where State Highway Commission brought petition for mandatory injunction, it was proper for landowner to claim compensation, and such an action by the landowner was not in violation of Ark. Const., Art. 5, § 20, as being a suit against the state. *Foster v. Arkansas State Hwy. Comm'n*, 258 Ark. 176, 527 S.W.2d 601 (1975).

**Evidence.**

Evidence that junkyard owner used his own equipment to relocate his junkyard and that the value of the equipment and labor used to accomplish the relocation was \$23,040, that the owner had no records of out-of-pocket expenses or amount he paid his sons to aid in the relocation, that value of the one acre he owned in his former junkyard was \$3,000 and he paid \$10 rent for the remaining nine acres, award to owner for relocation of \$17,000 was not against the preponderance of the evidence. *Foster v. Arkansas State Hwy. Comm'n*, 263 Ark. 62, 562 S.W.2d 298 (1978).

**Interest.**

Junkyard owner who sought damages for the relocation of his junkyard was not entitled to interest on compensation award where, as of the trial date, he had not completed relocating or removing the debris and old automobiles from the yard and thus had not surrendered possession. *Foster v. Arkansas State Hwy. Comm'n*, 263 Ark. 62, 562 S.W.2d 298 (1978).

**Pleadings.**

In action for mandatory injunction for screening or removal of junk, an answer by landowner is not necessary in order for him to obtain compensation, so long as he is not seeking special damages. *Foster v. Arkansas State Hwy. Comm'n*, 258 Ark. 176, 527 S.W.2d 601 (1975).

**Screening.**

The imposition of the cost of screening a person's junkyard was a deprivation of his vested property rights without just compensation and was unconstitutional as applied to him. *Arkansas State Highway Com. v. Turk's Auto Corp.*, 254 Ark. 67, 491 S.W.2d 387 (1973).

**27-74-408. Agreements with the United States.**

The State Highway Commission is authorized to enter into agreement with the United States Secretary of Transportation, as provided by Title 23 of the United States Code, relating to the control of junkyards in areas adjacent to those sections of the federal-aid interstate and federal-aid primary highway systems lying in Arkansas and to act in the name of the State of Arkansas in complying with the terms of such agreements.

**History.** Acts 1967, No. 640, Art. 2, § 6; A.S.A. 1947, § 76-2518.

**U.S. Code.** Control of junkyards, 23 U.S.C. § 136.

**27-74-409. Highway Clean-up Grant Program.**

(a) There is created the "Highway Clean-up Grant Program", to be administered by the State Highway Commission.

(b) The program shall provide grants to cities and counties to assist local law enforcement, county prosecuting attorneys, and city attorneys with the enforcement of this section.

(c)(1) The commission shall promulgate the rules necessary for the implementation of the program.

(2) The rules shall include:

(A) The procedure for making an application for a grant;

(B) The selection criteria for a grant;

(C) The limitations on use of grant money; and

(D) A procedure to provide for accountability of grant recipients and the monitoring of expenditures by grant recipients.

(d) This section shall be contingent on the appropriation and availability of funding for the program.

**History.** Acts 2005, No. 2147, § 4.

## SUBCHAPTER 5 — SCENIC EASEMENTS

### SECTION.

27-74-501. Policy.

27-74-502. Acquisition of land.

**Preambles.** Acts 1967, No. 640 contained a preamble which read: "Whereas, the Congress of the United States has enacted legislation in the Highway Beautification act of 1965 which will cause substantial losses in federal-aid highway funds apportioned to Arkansas on or after January 1, 1968, unless the Arkansas General Assembly enacts conforming legislation (a) to regulate the erection and maintenance of outdoor advertising signs, displays and devices in areas adjacent to the federal-aid Interstate and Primary Systems; (b) to regulate the establishment, use and maintenance of junkyards in such areas; and (c) to provide for the payment of full and just compensation upon the removal and relocation of outdoor advertising signs and junkyards; and

"Whereas, the Congress of the United States has made available additional federal funds for use in landscape and roadside development within federal-aid highway rights of way and for acquisition of interests and improvement of strips of land necessary for the restoration, preservation and enhancement of scenic beauty adjacent to such federal-aid highways;

"Now, therefore...."

**Effective Dates.** Acts 1967, No. 640, Art. 5: emergency failed to pass. Emergency clause provided: "It is hereby found

and determined by the General Assembly that recent Federal Highway legislation, particularly Public Law 89-285, approved October 22, 1965, and cited as the 'Highway Beautification Act of 1965' makes it necessary that the State of Arkansas provide for the regulation and control of outdoor advertising and junkyards or lose many millions of dollars of Federal-aid Highway funds greatly needed and required in this state to construct and maintain a suitable and efficient highway system; and it being further found and determined that the erection and maintaining of outdoor advertising and the establishment and maintenance of junkyards along the Federal-aid Interstate and Primary Highways of this state, unless controlled, mar the natural scenic beauty along such highways; and it being further found and determined that landscaping, scenic enhancement and rest and recreation areas adjacent to all Federal-aid Highways of this state are needed for the accommodation and enjoyment of our citizens and for the attraction of tourists, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval." Approved Apr. 6, 1967.

## CASE NOTES

**Cited:** Arkansas State Hwy. Comm'n v. Roark, 309 Ark. 265, 828 S.W.2d 843 (1992).

**27-74-501. Policy.**

(a) The General Assembly finds and declares that the restoration, preservation, and enhancement of scenic beauty within and adjacent to many of the state highways are conducive to safe, efficient, and comfortable use of these facilities and necessary to protect the public investment.

(b) Therefore, it is the duty of the State Highway Commission to adopt, promulgate, and enforce reasonable regulations for landscape and roadside development of the scenic values of selected areas adjacent to these highways through the acquisition and development of scenic easements on and improvement of strips of land necessary for the restoration, preservation, and enhancement of such scenic beauty, including scenic overlooks and rest and recreation areas.

**History.** Acts 1967, No. 640, Art. 3, § 1;  
A.S.A. 1947, § 76-2520.

**27-74-502. Acquisition of land.**

(a) The State Highway Commission is authorized to acquire and improve strips of land necessary for the restoration, preservation, and enhancement of scenic beauty within and adjacent to the state highway system and the federal-aid highways of this state, including acquisition for publicly owned and controlled rest and recreation areas and sanitary and other facilities within or adjacent to the highway right-of-way reasonably necessary to accommodate the traveling public.

(b) Any acquisition shall be in accord with the provisions of law pertaining to real property acquisition for highway, road, and street purposes.

(c) The interest in any land authorized to be acquired and maintained under this chapter may be the fee simple or any lesser interest as determined by the commission to be reasonably necessary to accomplish the purposes of this chapter.

(d) This acquisition may be by gift, purchase, exchange, or condemnation.

**History.** Acts 1967, No. 640, Art. 3, § 2;  
A.S.A. 1947, § 76-2521.

**CHAPTER 75****HIGHWAY CONSTRUCTION COMPACT****SECTION.**

27-75-101. U.S. Highway 82 Four Lane  
Construction Compact.  
27-75-102. Powers.

**SECTION.**

27-75-103. Authority — Members.  
27-75-104. Consent of United States Con-  
gress.



**27-75-101. U.S. Highway 82 Four Lane Construction Compact.**

The Governor, on behalf of this state, is hereby authorized to execute a compact, in substantially the following form, with the states of Mississippi, Alabama, Texas and any other state in which lies a portion of U.S. Highway 82; and the General Assembly hereby signifies in advance its approval and ratification of such compact, which compact is as follows:

**U.S. HIGHWAY 82 FOUR LANE CONSTRUCTION COMPACT****ARTICLE I.**

The purpose of this compact is to promote and ensure the four laning of U.S. Highway 82 within the party states and to establish a joint interstate authority to assist that effort.

**ARTICLE II.**

This compact shall become effective immediately as to the states ratifying it whenever the state of Arkansas and any other eligible state has ratified it and Congress has given consent thereto.

**ARTICLE III.**

The states which are parties to this compact (referred to as "party states") do hereby establish and create a joint agency which shall be known as the U.S. Highway 82 Four Lane Construction Authority (hereinafter referred to as "the authority"). The membership of such authority shall consist of representatives from each of the party states to be selected in the manner provided by laws enacted by the party states. The members of the authority shall not be compensated for service on the authority, but each of the members shall be entitled to actual and reasonable expenses incurred in attending meetings, or incurred otherwise in the performance of his duties as a member of the authority. The members of the authority shall hold regular quarterly meetings and such special meetings as its business may require. They shall choose annually a chairman and vice-chairman from among their members, and the chairmanship shall rotate each year among the party states in order of their acceptance of this compact. The secretary of the authority (hereinafter provided for) shall notify each member in writing of all meetings of the authority in such a manner and under such rules and regulations as the authority may prescribe. The authority shall adopt rules and regulations for the transaction of its business; and the secretary shall keep a record of all its business and shall furnish a copy thereof to each member of the authority. It shall be the duty of the authority, in general, to promote, encourage and coordinate the efforts of the party states to secure the timely four laning of U.S. Highway 82 within the party states. Toward this end, the authority shall have power to hold hearings; to conduct studies and surveys of all problems,

benefits, and other matters associated with the four laning of U.S. Highway 82 within the party states, and to make reports thereon; to acquire, by gift, grant or otherwise, from local, state, federal or private sources such money or property as may be provided for the proper performance of their function, and to hold and dispose of same; to cooperate with other public or private groups, whether local, state, regional or national, having an interest in the four laning of U.S. Highway 82 within the party states; to formulate and execute plans and policies for emphasizing the purpose of this compact before the Congress of the United States and other appropriate officers and agencies of the United States; and to exercise such other powers as may be appropriate to enable it to accomplish its functions and duties in connection with the four laning of U.S. Highway 82 within the party states.

#### ARTICLE IV.

The authority shall appoint a secretary, who shall be a person familiar with the nature, procedures and significance of the four lane completion and the informational, educational and publicity methods of stimulating general interest in such construction, and who shall be the compact administrator. The term of office of the secretary shall be at the pleasure of the authority, and such officer shall receive such compensation as the authority shall prescribe. The secretary shall maintain custody of the authority's books, records and papers, which shall be kept by the secretary at the office of the authority, and shall perform all functions and duties and exercise all powers and duties which may be delegated to the secretary by the authority.

#### ARTICLE V.

Each party state agrees that its legislature may, in its discretion, from time to time make available and pay over to the authority funds for the establishment and operation of the authority. The contribution of each party state will be in equal amounts.

#### ARTICLE VI.

Nothing in this compact shall be construed so as to conflict with any existing statute, or to limit the powers of any party state, or to repeal or prevent legislation, or to authorize or permit curtailment or diminution of any other highway construction project, or to affect any existing or future cooperative arrangement or relationship between any federal agency and a party state.

#### ARTICLE VII.

This compact shall continue in force and remain binding upon each party state until the legislature or Governor of each or either state takes action to withdraw therefrom; provided that such withdrawal

shall not become effective until six (6) months after the date of the action taken by the legislature or the Governor. Notice of such action shall be given to the other party state or states by the party state which takes such action.

**History.** Acts 1989, No. 622, § 1.

### **27-75-102. Powers.**

There is hereby granted to the Governor and to the members of the authority for Arkansas all the powers provided for in the compact. All officers of the State of Arkansas are hereby authorized and directed to do all things falling within their respective jurisdictions which are necessary or incidental to carrying out the purpose of the compact.

**History.** Acts 1989, No. 622, § 2.

### **27-75-103. Authority — Members.**

The representatives from the State of Arkansas who shall be members of the U.S. Highway 82 Four Lane Construction Authority shall be the five (5) members of the State Highway Commission who are each duly serving in the capacity as such a commissioner. During the course and extent of the compact, any newly appointed commissioner, or one appointed to fill the unexpired term of a commissioner, shall be a member of the authority and the replaced commissioner shall cease to be a member of the authority.

**History.** Acts 1989, No. 622, § 3.

### **27-75-104. Consent of United States Congress.**

The authority shall have the power to apply to the Congress of the United States for its consent and approval of the compact; but, in the absence of the consent of Congress and until such consent is secured, the compact shall be binding upon the State of Arkansas in all respects permitted by law for the party states, without the consent of Congress, to cooperate for the purpose enumerated in the compact and in the manner provided therein.

**History.** Acts 1989, No. 622, § 4.

## **CHAPTER 76**

## **REGIONAL MOBILITY AUTHORITY ACT**

### **SUBCHAPTER.**

1. GENERAL PROVISIONS.
2. CREATION.
3. GOVERNANCE.
4. POWERS AND DUTIES.
5. EMINENT DOMAIN.



## SUBCHAPTER

6. FINANCING AND BONDS.

7. TOLLING.

**SUBCHAPTER 1 — GENERAL PROVISIONS**

## SECTION.

27-76-101. Title.

27-76-102. Legislative findings.

27-76-103. Definitions.

27-76-104. Exemption from taxation or  
assessment.

## SECTION.

27-76-105. Exemption from fees.

27-76-106. Immunity.

27-76-107. Approval required.

**27-76-101. Title.**

This chapter is known and may be cited as the “Regional Mobility Authority Act”.

**History.** Acts 2007, No. 389, § 1.

**27-76-102. Legislative findings.**

The General Assembly finds that:

(1) Many transportation projects cannot be completed because the transportation construction and maintenance needs of the State of Arkansas far exceed the budget for highway construction and maintenance;

(2) Counties and municipalities have limited budgets for transportation construction and maintenance. As a result, they are often unable to be financial partners with the Arkansas State Highway and Transportation Department;

(3) Through the creation of regional mobility authorities throughout the state, counties and municipalities are empowered to become better partners for highway construction and maintenance with the department and the State Highway Commission; and

(4) The funding of regional mobility authorities is intended to supplement state and federal transportation funds. Such funding is not intended to substitute for state and federal transportation aid to counties and municipalities.

**History.** Acts 2007, No. 389, § 1.

**27-76-103. Definitions.**

As used in this chapter:

(1)(A) “Bond” means a revenue bond or note issued under this chapter by a regional mobility authority created under the Regional Mobility Authority Act, § 27-76-101 et seq.

(B) “Bond” includes any other financial obligation of a regional mobility authority authorized by this chapter, the laws of this state, or the Arkansas Constitution;

(2)(A) "Compensation" means any payment for the value of the use of time or the expenditure of moneys, including without limitation:

- (i) A salary; or
- (ii) Per diem allowance.

(B) "Compensation" does not include reimbursement as provided under § 27-76-302(d);

(3) "Debt service" means the amounts necessary for paying principal, interest, trustee's and paying agent's fees, and rebate costs and the amounts necessary to establish and maintain debt service reserves as provided in the authorizing resolution or trust indenture identified under this chapter;

(4) "Governmental entity" means a lawfully created branch, department, or agency of the federal, state, or local government;

(5) "Owner" means any individual, partnership, association, corporation, or organization having any title or interest in any property, rights, easements, and interest authorized to be acquired by and under the regional mobility authority of this chapter;

(6) "Person" means any individual, partnership, corporation, or other entity recognized by law as having power to contract;

(7) "Project development" means all phases of implementation conducted in relation to a transportation project, including without limitation:

- (A) Planning;
- (B) Environmental clearances;
- (C) Surveys;
- (D) Design;
- (E) Utility adjustments;
- (F) Right-of-way acquisition;
- (G) Construction; and
- (H) Construction inspection;

(8) "Public utility facility" means a facility that is either publicly or privately owned and that provides direct or indirect utility service to the public, including without limitation:

- (A) Sewage and water pumping stations;
- (B) Sewage and water treatment facilities;
- (C) Telephone electronic structures; and

(D) Major electrical power lines, pipelines, or substations whose major purpose is transport through a community;

(9) "Registered owner" means an owner of a motor vehicle as shown on the vehicle registration records maintained by the Office of Motor Vehicle or the analogous department or agency of another state or country;

(10)(A) "Toll facility project" means:

(i) Any new highway constructed under the provisions of this chapter by a regional mobility authority as a toll road; and

(ii) All property, rights, easements, rights-of-way, and interest that may be acquired by the regional mobility authority for or in connection with the construction or operation of a toll road.

(B) "Toll facility project" includes without limitation the following as the regional mobility authority deems necessary or desirable for the operation of a toll road:

- (i) Lands;
- (ii) Rights-of-way;
- (iii) Bridges;
- (iv) Tunnels;
- (v) Overpasses;
- (vi) Underpasses;
- (vii) Interchanges;
- (viii) Entrance plazas;
- (ix) Approaches;
- (x) Toll houses;
- (xi) Administration buildings;
- (xii) Storage buildings;
- (xiii) Other buildings; and
- (xiv) Facilities;

(11)(A) "Toll facility project costs" means any direct and indirect costs incurred in connection with the acquisition of rights-of-way for and constructing and equipping toll facility projects, including without limitation:

(i) The cost of the acquisition of all lands, property, rights, rights-of-way, easements, and interests acquired by a governmental entity;

(ii) The cost of demolishing or removing buildings or structures on the land so acquired;

(iii) The cost of acquiring any lands to which those buildings or structures may be moved;

(iv) The cost of all machinery and equipment;

(v) Financing charges, including interest accrued:

(a) Prior to construction;

(b) During construction; or

(c) For a period after construction;

(vi) The establishment of necessary funds and reserves;

(vii) The cost of traffic estimates, engineering fees, legal fees, plans, specifications, surveys, and estimates of cost and revenues;

(viii) Administration expense, expenditures, or any other expense that is necessary or incidental to determining the feasibility or practicability of a toll facility project; and

(ix) Cost, expenditure, or any other expense that is necessary or incidental to the construction of a toll facility project, the finance of the construction, and the placement of the toll facility project into operation.

(B) Toll facility project costs also shall include any obligation, expense, or expenditure incurred or made by the regional mobility authority for matters pertaining to a toll facility project, including without limitation:

- (i) Feasibility studies;
- (ii) Traffic surveys;



- (iii) Borings;
- (iv) Preparation of plans and specifications;
- (v) Engineering services; and

(vi) Cost, expenditure, or any other expense that is regarded as part of the costs of a toll facility project and that may be reimbursed to the State Highway Commission or other agency or department of the state out of the proceeds of revenue bonds or out of any other available funds of the commission;

(12) "Toll facility project revenues" means, without limitation, any tolls, rentals, license and permit revenues, contractual receipts, gifts, grants, moneys, charges, and other funds, including federal aid highway funds, and property of whatever nature coming into the possession of or under the control of the board of directors of the regional mobility authority by virtue of this chapter, except the proceeds derived from the sale of revenue bonds issued under this chapter;

(13) "Transponder" means a device placed on or within a vehicle that is capable of transmitting or receiving information used to assess or collect tolls;

(14) "Transportation project" means:

- (A) Any part of a transportation system;
- (B) Construction on or of any part of a transportation system;
- (C) Maintenance on or operation of any part of a transportation system; or
- (D) Preservation of any part of a transportation system; and

(15) "Transportation system" means infrastructure that provides mobility for people or goods in a region, including without limitation:

- (A) Roads;
- (B) Streets;
- (C) Highways;
- (D) Bridges;
- (E) Tunnels;
- (F) Sidewalks;
- (G) Bicycle paths;
- (H) Toll facilities;
- (I) Pedestrian ways;
- (J) Intermodal facilities;
- (K) Port authorities;
- (L) Railroads that are ninety-nine percent (99%) publicly owned;
- (M) Parking facilities;
- (N) Public transit systems;
- (O) Traveler information systems;
- (P) Intelligent transportation systems;
- (Q) Traffic management systems;
- (R) Traffic signal systems;
- (S) Safety improvements; or
- (T) Any other means of surface or water transportation.

**History.** Acts 2007, No. 389, § 1; 2009, substituted “Toll facility project costs also shall include any” for “Any” in (11)(B). No. 483, § 10.

**Amendments.** The 2009 amendment

#### **27-76-104. Exemption from taxation or assessment.**

(a) A regional mobility authority is exempt from ad valorem property taxation of or assessments on each of the following:

- (1) A transportation system;
- (2) A transportation project; and
- (3) Property the regional mobility authority acquires or uses under this chapter for a transportation project or transportation system.

(b) Income from the ownership or operation of the regional mobility authority shall be exempt from state income tax.

**History.** Acts 2007, No. 389, § 1.

#### **27-76-105. Exemption from fees.**

(a) Except as provided under subsection (b) of this section, a regional mobility authority is exempt from the payment or assessment of any of the following fees levied by a governmental entity, a property owner's association, or a homeowner's association:

- (1) Development fees;
- (2) Utility connection fees;
- (3) Assessments; and
- (4) Service fees.

(b) This section does not apply to fees or assessments charged under approved rate schedules or line extension policies of an electric or a gas utility that is owned by a municipality.

**History.** Acts 2007, No. 389, § 1.

#### **27-76-106. Immunity.**

(a) The powers and duties of a regional mobility authority conferred by this chapter are public and governmental functions exercised for a public purpose and for matters of public necessity.

(b) The exercise of the powers and the performance of the duties by a regional mobility authority under this chapter are immune from suit in tort unless immunity is expressly waived in writing.

**History.** Acts 2007, No. 389, § 1.

#### **27-76-107. Approval required.**

Any design or proposal for a road or highway improvement must be approved by the governmental entity that owns the roadway prior to the commencement of the development of the transportation project.

**History.** Acts 2007, No. 389, § 1.

**SUBCHAPTER 2 — CREATION****SECTION.**

27-76-201. Authority to create.

27-76-202. Purposes.

27-76-203. Membership in a regional mobility authority.

**SECTION.**

27-76-204. Public corporation status.

**27-76-201. Authority to create.**

(a) A single county may create a regional mobility authority by adoption of an ordinance.

(b) A combination of contiguous counties may create a regional mobility authority by each county:

(1) Adopting an ordinance that provides for the county's participation in the regional mobility authority; and

(2) Entering into a joint agreement with the other participating counties that states the jurisdictional boundaries of the regional mobility authority.

(c) This section shall not limit additional contiguous counties or municipalities from becoming a member in the regional mobility authority as provided under § 27-76-203.

**History.** Acts 2007, No. 389, § 1.

**27-76-202. Purposes.**

The purposes of a regional mobility authority created under this chapter are to:

(1) Plan, construct, operate, or fund transportation projects of the regional mobility authority; or

(2) Plan, construct, operate, or fund improvements to a transportation system of the regional mobility authority.

**History.** Acts 2007, No. 389, § 1.

**27-76-203. Membership in a regional mobility authority.**

(a) To become a member of a regional mobility authority, a governing body of a municipality or county within the jurisdictional boundaries of the regional mobility authority shall:

(1) Provide by ordinance for the participation of the municipality or county in the regional mobility authority; and

(2) Enter into an agreement with the other participating members if such members exist.

(b) The agreement between members of a regional mobility authority shall establish the terms and conditions of the operation of the regional mobility authority with the limitations provided in this chapter and other applicable laws.

(c) To the extent that it is consistent with this chapter, the agreement shall comply with the provisions of § 25-20-104(c).



**History.** Acts 2007, No. 389, § 1.

### **27-76-204. Public corporation status.**

Upon creation of a regional mobility authority:

- (1) The regional mobility authority and its members shall:
  - (A) Constitute a public corporation; and
  - (B) Have perpetual succession; and
- (2) The regional mobility authority and its members may:
  - (A) Contract and be contracted with;
  - (B) Sue and be sued in tort to the extent that it has expressly waived liability in writing; and
  - (C) Have and use a common seal.

**History.** Acts 2007, No. 389, § 1.

## **SUBCHAPTER 3 — GOVERNANCE**

### **SECTION.**

27-76-301. Generally.

27-76-302. Board of directors.

27-76-303. Membership on the board of directors.

### **SECTION.**

27-76-304. Terms of directors.

### **27-76-301. Generally.**

A regional mobility authority created under this chapter shall be operated and controlled by a board of directors.

**History.** Acts 2007, No. 389, § 1.

### **27-76-302. Board of directors.**

(a) A board of directors shall manage and control each regional mobility authority created under this chapter, including the following:

- (1) Property;
- (2) Operations;
- (3) Business; and
- (4) Affairs.

(b) The board of directors shall be solely responsible for selecting the chair of the board of directors and establishing procedures by which it shall operate.

(c) A director shall not receive compensation in any form from or for his or her services as a director.

(d) Each director shall be entitled to reimbursement by the regional mobility authority for any necessary expenditures incurred in connection with the performance of his or her general duties as a director.

**History.** Acts 2007, No. 389, § 1.

**27-76-303. Membership on the board of directors.**

(a) Unless the structure of the board of directors is otherwise specified in the agreement establishing the regional mobility authority, the board of directors of a regional mobility authority shall consist of no fewer than five (5) directors as provided under this section.

(b)(1) The board of directors shall include the county judge or designated representative of each county that is a member of the regional mobility authority and the mayor or designated representative of each city of the first class that is a member of the regional mobility authority.

(2) If the number of directors is fewer than five (5) after fulfilling the requirements of subdivision (b)(1) of this section, then mayors or designated representatives of the cities of the second class that are members of the regional mobility authority are appointed to the board of directors in descending order of population as determined by the last federal decennial census until five (5) directors have been appointed.

(c) The designated representative of a county judge or mayor under subsection (b) of this section shall be a qualified elector of the jurisdiction that the designated representative is appointed to represent.

(d) If a city of the second class becomes a city of the first class and is a member of the regional mobility authority, the mayor of that city or designated representative shall become a director.

(e) Membership of cities of the second class on the board of directors shall be adjusted after each federal decennial census.

**History.** Acts 2007, No. 389, § 1.

**27-76-304. Terms of directors.**

(a) A director who is a public official may serve on the board of directors during his or her term of office as the county judge or mayor of a member of a regional mobility authority.

(b) A director who is the designated representative of the mayor or county judge of a member of the regional mobility authority serves at the pleasure of the mayor of the municipality or the county judge of the county that is a member of the regional mobility authority.

**History.** Acts 2007, No. 389, § 1.

**SUBCHAPTER 4 — POWERS AND DUTIES**

SECTION.

27-76-401. Powers generally.

27-76-402. Limitations.

27-76-403. Authority to contract.

27-76-404. Actions affecting existing  
roads — Grade separation.

SECTION.

27-76-405. Expenditures for feasibility  
studies.

27-76-406. Reimbursement for feasibility  
studies.

27-76-407. Joint transportation projects

## SECTION.

or joint transportation systems between regional mobility authorities.

27-76-408. Transfer of a transportation project or transportation system — Procedure.

## SECTION.

27-76-409. Agreements to construct, maintain, and operate transportation projects.

27-76-410. Consistency of planning.

## 27-76-401. Powers generally.

The board of directors of a regional mobility authority created under this chapter may:

(1) Make and adopt all necessary bylaws for its organization and operation;

(2) Elect officers and employ personnel necessary for its operation;

(3) Build, operate, maintain, expand, fund, or own a transportation project or a transportation system;

(4) Apply for, receive, and spend grants for any purpose under this chapter;

(5) Enter into contracts as provided in § 27-76-403;

(6) Enter into any agreement with any road or street improvement district established under § 14-316-101 et seq., § 14-317-101 et seq., and § 14-322-101 et seq.;

(7) Enter into any agreement with the State Highway Commission and the Arkansas State Highway and Transportation Department;

(8) Acquire lands and hold title to the lands acquired in its own name;

(9) Acquire, own, use, and dispose of property in the exercise of its powers and the performance of its duties under this chapter;

(10) Acquire any property necessary to carry out the purposes of this chapter by exercising the power of eminent domain as provided under § 27-76-501 et seq.;

(11) Enter into agreements or contracts as provided under this chapter;

(12) Construct or change grade separations as provided under § 27-76-404;

(13) Fund feasibility studies as provided under §§ 27-76-405 and 27-76-406;

(14) Enter into agreements for joint transportation projects or transportation systems between regional mobility authorities as provided under § 27-76-407;

(15) Transfer a transportation project or transportation system as provided under § 27-76-408;

(16) Develop and utilize financing options as provided under § 27-76-601 et seq.;

(17) Issue revenue bonds and provide for the financing of revenue bonds as provided under § 27-76-601 et seq.;

(18) Impose and collect tolls for a toll facility project owned or operated by the regional mobility authority subject to voter approval as provided under § 27-76-701(d);



(19) Impose and collect charges or rates for the use of a transportation system or transportation project that is owned or operated by the regional mobility authority, other than a toll facility project, specifically to set:

- (A) Passenger charges for public transit system users;
- (B) Parking fees for users of parking decks or other parking facilities;
- (C) Ferry fees for the use of ferries;
- (D) Passenger and freight fees for the use of railroads;
- (E) Freight and user fees for the use of intermodal and port facilities;
- (F) Access fees and charges for the use of traveler information systems; or
- (G) Other fees and charges that are usually and customarily charged of users of a transportation system or a transportation project;

(20) Index the cost for construction materials to the cost set by the market;

(21) Request and receive from time to time from counties or cities within the boundaries of the regional mobility authority funds to finance and support the regional mobility authority, including county or city turnback funds as set forth in §§ 27-70-206 and 27-70-207;

(22) Promote the use of a transportation project through advertising or marketing as it determines to be appropriate, including the promotion of a transportation project operated by a regional mobility authority on behalf of another entity;

(23) Receive property or funds by gift or donation for the finance and support of the regional mobility authority; and

(24) Do all things necessary or appropriate to carry out the powers expressly granted or duties expressly imposed under this chapter.

**History.** Acts 2007, No. 389, § 1.

### **27-76-402. Limitations.**

(a) Notwithstanding any other provision of law, a regional mobility authority shall not sell a toll facility project to a private entity or enter into a lease for a toll facility or concession agreement related to a toll facility.

(b) Notwithstanding any other provision of law, a toll facility project established by a regional mobility authority shall be for construction of new highways only.

(c) Notwithstanding any other provision of law, a regional mobility authority shall not establish a toll facility project without voter approval of the initial imposition of the tolls, including the initial toll rate, and if revenue bonds are to be issued by the regional mobility authority to fund all or a portion of the costs of the toll facility project, the issuance of the maximum principal amount of bonded indebtedness.

(d) Notwithstanding any other provision of law, a regional mobility authority shall not acquire or receive by conveyance a transportation project or transportation system from another public or private entity that is either completed or for which a construction notice to proceed has been issued to convert the transportation project or transportation system to a toll facility project.

**History.** Acts 2007, No. 389, § 1.

### **27-76-403. Authority to contract.**

(a) A regional mobility authority created under this chapter may enter into agreements or contracts with a governmental entity or a private entity.

(b) The types of agreements or contracts that a regional mobility authority may enter into under this chapter include without limitation:

- (1) Lease agreements;
- (2) Rental agreements;
- (3) Operating agreements;
- (4) Service agreements;
- (5) License agreements;
- (6) Promotional agreements; and
- (7) Purchasing agreements.

(c) The scope of agreements or contracts that a regional mobility authority may enter into under this chapter includes without limitation:

(1) Rent, lease, or make property available for the benefit of users of a transportation project or a transportation system other than a public utility facility;

(2) Plan, design, construct, operate, or maintain a transportation project on behalf of a governmental entity within the boundaries of the regional mobility authority; and

(3) Acquire with the consent of a governmental entity or private entity a transportation project or transportation system from that entity and assume any debts, obligations, and liabilities of the entity relating to a transportation project or transportation system transferred to the regional mobility authority, provided that a regional mobility authority shall not acquire a transportation project or transportation system from another public or private entity that is completed or for which a construction notice to proceed has been issued to convert the transportation project or transportation system to a toll facility project.

(d) A regional mobility authority shall not sell a toll facility project to a private entity or enter into a lease for a toll facility or a concession agreement related to a toll facility.

**History.** Acts 2007, No. 389, § 1.

**27-76-404. Actions affecting existing roads — Grade separation.**

(a) A regional mobility authority may construct a grade separation at an intersection of a transportation project with a railroad or highway and change the line of the railroad or grade of a highway to accommodate the design of the grade separation as provided under this section.

(b) A regional mobility authority shall obtain consent from the Arkansas State Highway and Transportation Department and the State Highway Commission before constructing a grade separation under this section that affects a segment of the state highway system.

(c) A regional mobility authority shall pay the cost of a grade separation and any damage incurred in changing a line of a railroad or the grade of a highway as part of the cost of the transportation project.

(d)(1) On request of the county, a regional mobility authority that has changed the location of a segment of a county road as part of its development of a transportation project shall reconstruct that segment of the road at a location that the regional mobility authority determines restores the utility of the road.

(2) On request of the city, a regional mobility authority that has changed the location of a segment of a city road as part of its development of a transportation project shall reconstruct that segment of the road at a location that the regional mobility authority determines restores the utility of the road.

(3) Determinations under this subsection (d) as to the relocation of a road shall be at the discretion of the regional mobility authority.

(4) Any reconstruction under this subsection (d) and the associated costs of reconstruction are deemed to be in furtherance of a transportation project.

**History.** Acts 2007, No. 389, § 1.

**27-76-405. Expenditures for feasibility studies.**

(a) A regional mobility authority may pay the expenses of studying the cost and feasibility and any other expenses relating to the preparation and issuance of bonds for a proposed transportation project by:

(1) Using legally available revenue derived from an existing transportation project;

(2) Borrowing money, issuing bonds, or entering into a loan agreement payable out of legally available revenue anticipated to be derived from the operation of an existing transportation project;

(3) Pledging to the payment of the bonds or a loan agreement legally available revenue anticipated to be derived from the operation of a transportation project; or

(4) Pledging to the payment of the bonds or loan agreement legally available revenue to the regional mobility authority from another source.

(b) Money spent by a regional mobility authority under this section for a proposed transportation project shall be reimbursed to the transportation project from which the money was spent from the



proceeds of bonds issued for the acquisition and construction of the proposed transportation project.

(c) The use of any money of a transportation project to study the feasibility of another transportation project or used to repay any money used for that purpose does not constitute an operating expense of the transportation project producing the revenue and may be paid only from the surplus money of the transportation project as determined by the regional mobility authority.

**History.** Acts 2007, No. 389, § 1.

### **27-76-406. Reimbursement for feasibility studies.**

(a) The following are allowable reimbursable expenses for studying the cost and feasibility of a transportation project as provided under this section:

(1) The preparation and issuance of bonds for the acquisition or construction of a proposed transportation project by a regional mobility authority; or

(2) The improvement, extension, or expansion of an existing transportation project of the regional mobility authority.

(b) Any of the following may pay all or part of the expenses under this section related to a transportation project and be reimbursed as provided under this section:

(1) One (1) or more municipalities, counties, or other governmental entities;

(2) A combination of municipalities, counties, or other governmental entities;

(3) A governmental entity or private entity with its place of business in this state; or

(4) An individual who resides in this state.

(c)(1) Funds expended under this section for a proposed transportation project are reimbursable without interest and with the consent of the regional mobility authority to the person paying the expenses as provided under this section.

(2) The reimbursements shall be paid out of the proceeds from revenue bonds issued for or other proceeds that may be used for the acquisition, construction, improvement, extension, expansion, maintenance, repair, or operation of the transportation project.

**History.** Acts 2007, No. 389, § 1.

### **27-76-407. Joint transportation projects or joint transportation systems between regional mobility authorities.**

(a) If two (2) or more regional mobility authorities determine that the traffic needs within the boundaries of each regional mobility authority could be most efficiently and economically met by jointly operating two (2) or more transportation projects in the separate regional mobility authorities, then the regional mobility authorities may create one (1)

operational and financial enterprise to operate the transportation projects.

(b) If a regional mobility authority determines that a transportation project could most efficiently and economically be acquired or constructed if it were a part of the transportation system and that the addition will benefit the system, the regional mobility authority may:

(1) Create more than one (1) transportation system and may combine two (2) or more transportation systems into one (1) system; or

(2) Finance, acquire, construct, and operate additional transportation projects as additions to or expansions of a transportation system.

(c) The revenue of a transportation system that is merged under this section shall be accounted for separately and shall not be commingled with the revenue of a transportation project that is not a part of the transportation system that was merged under this section or with the revenue of another transportation system.

**History.** Acts 2007, No. 389, § 1.

### **27-76-408. Transfer of a transportation project or transportation system — Procedure.**

(a) A regional mobility authority may sell, lease, or convey any of its transportation projects or transportation systems to one (1) or more governmental entities, or a governmental entity may convey a transportation project or a transportation system to a regional mobility authority if:

(1) The transferee has executed written commitments to assume jurisdiction over the transferred transportation project or transportation system;

(2) The property and contract rights in the transferred transportation project or transportation system and bonds issued for the project or system are not unfavorably affected by the transfer;

(3) The transfer is not prohibited under the bond proceedings applicable to the transferred transportation project or transportation system;

(4) An adequate provision has been made for the assumption of all debts, obligations, and liabilities relating to the transferred transportation project or transportation system by the regional mobility authority or governmental entity that is assuming jurisdiction over the transferred transportation project or transportation system;

(5) The transferee lawfully assumes:

(A) Jurisdiction over the transferred transportation project or transportation system; and

(B) The debts, obligations, and liabilities of the regional mobility authority relating to the transferred transportation project or transportation system; and

(6) The transfer has been approved by the board of directors of the regional mobility authority and the transferee or transferor.

(b) If the requirements of subsection (a) of this section are met, then a regional mobility authority or governmental entity may transfer its work product to determine the feasibility of the construction, improvement, extension, or expansion of a transportation system or transportation project, including without limitation:

- (1) Traffic estimates;
- (2) Revenue estimates;
- (3) Plans;
- (4) Specifications;
- (5) Surveys;
- (6) Appraisals;
- (7) Financial work products; or
- (8) Other work product developed by the regional mobility authority or governmental entity to determine the feasibility of the construction, improvement, extension, or expansion of a transportation project or transportation system.

(c)(1) A regional mobility authority or governmental entity that accepts a transfer under this section may reimburse the transferor for any expenditures that it made prior to the transfer and any other amounts expended under related agreements.

(2) The reimbursement may be made from the feasibility study fund or other lawful funding source to pay the costs of work product for a transferred transportation project or transportation system.

(3) The reimbursement may be made over time, as determined by the parties.

**History.** Acts 2007, No. 389, § 1.

### **27-76-409. Agreements to construct, maintain, and operate transportation projects.**

(a)(1) A regional mobility authority may enter into an agreement with a governmental entity.

(2) For purposes of this section, a governmental entity may include:

- (A) The federal government;
- (B) A state of the United States;
- (C) Another governmental entity;
- (D) A political subdivision of another governmental entity; or
- (E) A toll road corporation owned or operated by any governmental entity.

(b)(1) A regional mobility authority may enter into an agreement to allow a public or private entity to:

- (A) Study the feasibility of a transportation project; or
- (B) Design, construct, maintain, or repair a transportation project.

(2) A regional mobility authority and one (1) or more entities described under subsection (a) of this section may enter into a joint agreement to study the feasibility of a transportation project or to acquire, design, finance, construct, maintain, repair, operate, extend, or expand a transportation project.



(3) A regional mobility authority shall not sell a toll facility project to a private entity or enter into a lease for a toll facility or a concession agreement related to a toll facility.

(c)(1) A regional mobility authority has broad discretion to negotiate provisions in a development agreement through which a governmental entity or private entity may contribute resources or improvements to a project.

(2) The development agreement may include provisions relating to:

(A) The design, financing, and construction of a transportation project in accordance with standards adopted by the regional mobility authority; and

(B) Professional and consulting services to be rendered under standards adopted by the regional mobility authority in connection with a transportation project.

(d) A regional mobility authority shall not incur a financial obligation on behalf of or guarantee the obligations of a governmental entity or a private entity that constructs, maintains, or operates a transportation project.

(e) A regional mobility authority or a county or municipality that is a member of a regional mobility authority is not liable for any financial or other obligation of a transportation project solely because a governmental entity or a private entity constructs or finances part of a transportation project.

(f) A regional mobility authority shall not directly provide water, wastewater, natural gas, petroleum pipeline, electric transmission, electric distribution, telecommunications, information, or cable television services.

**History.** Acts 2007, No. 389, § 1.

## **27-76-410. Consistency of planning.**

(a)(1) A regional mobility authority may develop plans for transportation projects.

(2) The plans shall be consistent with state implementation plans, statewide transportation improvement programs if federal aid funds are involved, statewide long-range transportation plans, city and county master street plans, and metropolitan transportation plans in metropolitan areas as required under 23 U.S.C. § 134 as it existed on January 1, 2007.

(b) Nothing in this section shall interfere with the responsibility and authority of metropolitan planning organizations to perform transportation systems planning as required under 23 U.S.C. § 134 as it existed on January 1, 2007.

(c) Nothing in this section shall interfere with the responsibility and authority of the Arkansas State Highway and Transportation Department and the State Highway Commission to perform transportation systems planning.

**History.** Acts 2007, No. 389, § 1.

## **SUBCHAPTER 5 — EMINENT DOMAIN**

### **SECTION.**

27-76-501. Generally.

27-76-502. Entering property.

27-76-503. Condemnation petition.

### **SECTION.**

27-76-504. Declaration of taking.

27-76-505. Condemnation proceedings  
and judgment.

### **27-76-501. Generally.**

A regional mobility authority may acquire any property necessary to carry out the public purposes of this chapter by exercising the power of eminent domain.

**History.** Acts 2007, No. 389, § 1.

### **27-76-502. Entering property.**

(a) A regional mobility authority, its agents, or its employees may with the consent of the owner enter upon real property to:

- (1) Make surveys;
- (2) Perform examinations;
- (3) Take photographs;
- (4) Perform tests or samplings; or

(5) Engage in other activities for the purpose of appraising the property or determining whether it is suitable for the regional mobility authority's purpose.

(b) If an owner of real property does not consent, a regional mobility authority may seek a court order to enter a property under this section.

**History.** Acts 2007, No. 389, § 1.

### **27-76-503. Condemnation petition.**

(a) A regional mobility authority may exercise its power of eminent domain by filing an appropriate petition in condemnation in the circuit court of the county in which the property sought to be taken is situated to have the compensation for right-of-way determined.

(b) The petition in condemnation shall describe the lands and property sought to be taken.

(c) The regional mobility authority shall give the owner of the property to be taken at least ten (10) days' notice in writing of the time and place where the petition will be heard.

(d)(1) If the property sought to be taken is located in more than one (1) county, the petition may be filed in any circuit court having jurisdiction in any county in which any part of the property may be located.

(2) The proceedings held in the circuit court shall apply to all of the property described in the petition.

(e) If the owner of the property sought to be taken is a nonresident of the state, notice shall be made in accordance with the Arkansas Rules of Civil Procedure.

**History.** Acts 2007, No. 389, § 1.

#### **27-76-504. Declaration of taking.**

(a) When the immediate possession of lands and property is sought to be obtained, the regional mobility authority may file a declaration of taking with a court of competent jurisdiction at any time before judgment or together with the petition in condemnation.

(b) The petitioner may file a declaration of taking at any time before a judgment is signed or with the petition in condemnation in any proceeding instituted by and in the name of the regional mobility authority that involves the acquisition of real property, an interest in real property, or an easement.

(c) The declaration of taking shall contain or have annexed to it the following:

(1) A statement that the regional mobility authority is taking the real property, the interest in the real property, or the easement;

(2) A statement of the purpose for which the regional mobility authority is taking the real property, the interest in the real property, or the easement for the use of the regional mobility authority;

(3) A description of the real property, the interest in the real property, or the easement that the regional mobility authority is taking, sufficient for the identification thereof;

(4) A plat showing the real property, the interest in the real property, or the easement that the regional mobility authority is taking; and

(5) A statement of the amount of money estimated by the acquiring regional mobility authority to be just compensation for the taking of the real property, the interest in the real property, or the easement.

**History.** Acts 2007, No. 389, § 1.

#### **27-76-505. Condemnation proceedings and judgment.**

(a) The circuit court shall impanel a jury of twelve (12) persons, as in other civil cases, to ascertain the amount of compensation that the regional mobility authority shall pay for the real property, the interest in the real property, or the easement which the regional mobility authority is taking.

(b) The matter shall proceed and be determined as in other civil cases.

(c) In all cases of infants or incompetent persons, when no legal representative or guardian appears in their behalf at the hearing, it shall be the duty of the circuit court to appoint a guardian ad litem who shall represent their interest for all purposes.

(d) Compensation shall be ascertained and awarded in the proceeding and established by judgment therein.



**History.** Acts 2007, No. 389, § 1.

## SUBCHAPTER 6 — FINANCING AND BONDS

### SECTION.

27-76-601. Financing generally.  
27-76-602. Authority to issue bonds.  
27-76-603. Tax exempt status.  
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### SECTION.

27-76-607. Repayment.  
27-76-608. Lien in favor of bondholders.  
27-76-609. Refunding bonds.  
27-76-610. Interim bonds.  
27-76-611. Revolving fund.

### **27-76-601. Financing generally.**

(a) A regional mobility authority may be financed or supported by receiving the following:

(1) If requested and adopted, revenue from the levy by a member county of a sales tax under § 26-74-201 et seq., § 26-74-301 et seq., and § 26-74-401 et seq. for the benefit of the regional mobility authority;

(2) If requested and adopted, revenue from the levy by a member city of a sales tax under § 26-75-201 et seq. and § 26-75-301 et seq. for the benefit of the regional mobility authority;

(3) Revenue from a motor vehicle tax imposed by a county that is a member of a regional mobility authority under § 26-78-101 et seq.;

(4) If authorized by law, requested, and adopted, revenue from the levy of an additional sales and use tax for the benefit of a regional mobility authority by a county or city not to exceed one-half of one percent (0.5%);

(5) Proceeds from tolls from toll facility projects owned by the regional mobility authority;

(6) Proceeds from charges and rates imposed on surface transportation systems owned by the regional mobility authority that are not toll facility projects;

(7) Proceeds from the sale of bonds;

(8) State turnback funds received from counties that are members of the regional mobility authority and cities that are within the boundaries of a regional mobility authority, under §§ 27-70-206 and 27-70-207;

(9) Other state funding that is appropriated; or

(10) Other funds from a state agency.

(b) Taxes and tolls imposed under subdivisions (a)(1)-(5) of this section shall be approved by voters pursuant to all applicable election laws.

(c)(1) A regional mobility authority shall not use revenue from a transportation project in a manner that is not authorized by this chapter or other law.

(2) Except as provided by this chapter, revenue derived from a transportation project shall not be applied for a purpose or to pay a cost other than a cost or purpose that is reasonably related to or anticipated to be for the benefit of a transportation project.

**History.** Acts 2007, No. 389, § 1.

### **27-76-602. Authority to issue bonds.**

(a) If a regional mobility authority created under this chapter owns or operates a transportation system and desires to construct improvements, betterments, and extensions thereto, the regional mobility authority may issue revenue bonds pursuant to a bond resolution and under the provisions of this chapter to pay the cost of a transportation project or to pay all or part of the cost of a transportation project that will become part of a transportation system.

(b) If a regional mobility authority pursues the development of a toll facility project, the regional mobility authority may issue revenue bonds pursuant to a bond resolution and under the provisions of this chapter to pay the toll facility project costs with toll facility project revenues.

**History.** Acts 2007, No. 389, § 1.

### **27-76-603. Tax exempt status.**

Bonds issued under this chapter and income from the bonds, including any profit made on the sale or transfer of the bonds, are exempt from taxation in this state.

**History.** Acts 2007, No. 389, § 1.

### **27-76-604. Bond resolution required.**

(a) Bonds issued in accordance with this chapter shall be authorized by resolution of the board of directors of the regional mobility authority.

(b) The bonds may be issued as registered bonds and may be exchangeable for bonds of another denomination or in another form.

(c) As determined in the bond resolution, the bonds of each issue shall:

(1) Be dated;

(2) Bear interest at the rate or rates provided by the bond resolution beginning on the dates provided by the bond resolution as authorized by law or bear no interest;

(3) Mature at the time or times provided by the bond resolution, not exceeding forty (40) years from their date or dates; and

(4) Be made redeemable before maturity at the price or prices and under the terms provided by the bond resolution.

(d) As determined in the bond resolution, the bonds of each issue may:

(1) Be in such form and denominations;

(2) Be payable at such places within or without the state; or

(3) Contain such terms and conditions as the members of the regional mobility authority shall determine.

(e) The bonds shall have all of the qualities of and shall be deemed to be negotiable instruments under the laws of the State of Arkansas, subject to provisions as to registration as set forth in this section.

(f) The authorizing resolution may contain any other terms, covenants, and conditions that the board of directors of the regional mobility authority deem to be reasonable and desirable, including without limitation those pertaining to the:

- (1) Maintenance of various funds and reserves;
- (2) Nature and extent of any security for payment of the bonds;
- (3) Custody and application of the proceeds of the bonds;
- (4) Collection and disposition of revenues;
- (5) Investment for authorized purposes; and
- (6) Rights, duties, and obligations of the regional mobility authority and the holders and registered owners of the bonds.

(g)(1) The authorizing resolution may provide for the execution of a trust indenture between the regional mobility authority and any financial institution within or without the State of Arkansas.

(2) The trust indenture may contain any terms, covenants, and conditions that are deemed desirable by the board of directors of the regional mobility authority, including without limitation those pertaining to the:

- (A) Maintenance of various funds and reserves;
- (B) Nature and extent of any security for the payment of the bonds;
- (C) Custody and application of the proceeds of the bonds;
- (D) Collection and disposition of revenues;
- (E) Investment and reinvestment of any moneys during periods not needed for authorized purposes; and
- (F) Rights, duties, and obligations of the regional mobility authority and the holders and registered owners of the bonds.

(h)(1) An authorizing resolution and trust indenture relating to the issuance and security of the bonds shall constitute a contract between the regional mobility authority and the holders or registered owners of the bonds.

(2) The contract and all covenants, agreements, and obligations in the contract shall be promptly performed in strict compliance with the terms and provisions of the contract, and the covenants, agreements, and obligations of the regional mobility authority may be enforced by mandamus or other appropriate proceeding at law or in equity.

(i)(1) The resolution shall fix the minimum fees, fares, tolls, or charges to be collected prior to the payment of all of the bonds, with exceptions as may be provided in the resolution, and shall pledge the revenues derived from the regional mobility authority's transportation system or any specified portion of the regional mobility authority's transportation system for the purpose of paying the bonds and interest on the bonds.

(2) The rates to be charged for the use of the regional mobility authority's transportation system shall be sufficient to provide for the payment of all principal of and interest on all bonds when due.



(j)(1) Additional bonds may be issued in the same manner to pay the costs of a transportation project.

(2) Unless otherwise provided in the bond resolution, the additional bonds shall be on a parity, without preference or priority, with bonds previously issued and payable from the revenue of the transportation project.

(3) A regional mobility authority may issue bonds for a transportation project secured by a lien on the revenue of the transportation project subordinate to the lien on the revenue securing other bonds issued for the transportation project.

**History.** Acts 2007, No. 389, § 1.

### **27-76-605. Sale.**

(a) The bonds may be sold in such manner, either at public or private sale, and upon such terms as the members of the regional mobility authority shall determine to be reasonable and expedient for effectuating the purposes of the regional mobility authority.

(b) The bonds may be sold at a price that the board of directors of the regional mobility authority determine to be in the best interest of the regional mobility authority, including sale at discount.

(c)(1) The bonds shall be executed by manual or facsimile signature of the chair of the regional mobility authority and the manual or facsimile signature of the secretary of the regional mobility authority or any other officer of the regional mobility authority authorized to do so by resolution of the board of directors.

(2) In case any of the officers whose signatures appear on the bonds shall cease to be the officers before delivery of the bonds, their signatures nevertheless shall be valid and sufficient for all purposes.

(d) Each bond shall be impressed or imprinted with the seal of the regional mobility authority.

**History.** Acts 2007, No. 389, § 1.

### **27-76-606. Proceeds.**

(a) The proceeds of each bond issue shall be disbursed in the manner and under any restrictions as provided in the bond resolution.

(b)(1) The proceeds derived from the sale of the bonds shall be used solely for the purpose of:

(A) Making betterments, improvements, and extensions to the surface transportation system owned and operated by the regional mobility authority;

(B) Paying interest on the bonds during the period of construction of the betterments, improvements, and extensions;

(C) Establishing any necessary reserves for the bonds;

(D) Paying the costs of issuing the bonds; and

(E) Paying any other costs and expenditures of whatever nature incidental to the accomplishment of the betterments, improvements, and extensions.

(2) The terms “betterments”, “improvements”, and “extensions” include surface transportation systems as well as all other real and personal property, buildings, structures, or other improvements or facilities as may be necessary or advisable for the proper and efficient operation of the regional mobility authority’s surface transportation system.

(c) If the proceeds of a bond issue exceed the cost of the transportation project for which the bonds were issued, the surplus shall be segregated from the other money of the regional mobility authority and used only for the purposes specified in the bond resolution.

(d) To the extent permitted under the applicable bond proceedings, revenue from one (1) transportation project or toll facility project of a regional mobility authority may be used to pay the cost of another transportation project or toll facility project of the same regional mobility authority.

**History.** Acts 2007, No. 389, § 1.

### **27-76-607. Repayment.**

(a) Bonds issued under the provisions of this chapter shall be payable from revenues derived from the regional mobility authority’s transportation system.

(b) The bonds shall not in any event constitute an indebtedness of nor pledge the faith and credit of the State of Arkansas or the county or counties or municipality or municipalities creating the regional mobility authority within the meaning of any constitutional provisions or limitations.

(c) It shall be plainly stated on the face of each bond that it:

(1) Is issued under the provisions of this chapter;

(2) Does not constitute an indebtedness of the State of Arkansas or the county or counties or the municipality or municipalities creating the regional mobility authority within any constitutional provisions or limitations; and

(3) Is not backed by the full faith and credit of the State of Arkansas or the county or counties or municipality or municipalities creating the regional mobility authority.

(d) The bonds and the interest on the bonds shall be exempt from all state, county, and municipal taxation, including without limitation income taxation and inheritance taxation.

**History.** Acts 2007, No. 389, § 1.

**27-76-608. Lien in favor of bondholders.**

(a) The payment of the principal of bonds issued under this chapter and the interest thereon may be secured by a lien on and security interest in the regional mobility authority's surface transportation system or any specified portion of the regional mobility authority's surface transportation system.

(b) It shall not be necessary to the perfection of the lien and pledge for such purposes that the trustee in connection with the bond issue or the holders of the bonds take possession of the collateral security.

(c) Subject to whatever restrictions may be contained in the resolution or indenture governing the bonds, any holder of bonds issued under the provisions of this chapter may enforce either at law or in equity the lien and may compel by proper suit the performance of the duties of the officers of the board of directors of the issuing regional mobility authority set forth in this chapter.

(d)(1) In the event there is default in the payment of the principal or interest on any of the bonds, a court of competent jurisdiction may appoint a receiver to:

(A) Administer the regional mobility authority's surface transportation system pledged to the payment of the bonds; or

(B) Administer the specified portion of the regional mobility authority's surface transportation system pledged to the payment of the bonds.

(2) The receiver shall perform the duties specified in subdivision (d)(1) of this section on behalf of the public body.

(3) The receiver shall have the power to:

(A) Charge and collect rates sufficient to provide for:

(i) The payment of the bonds;

(ii) The interest on the bonds; and

(iii) The payment of any operating expenses of the surface transportation system pledged to the payment of the bonds or the portion of the surface transportation system pledged to the payment of the bonds; and

(B) Apply the income and revenues of the surface transportation system pledged to the payment of the bonds or the portion of the surface transportation system pledged to the payment of the bonds in conformity with this chapter and the resolution or indenture providing for the issuance of the bonds.

**History.** Acts 2007, No. 389, § 1.

**27-76-609. Refunding bonds.**

(a)(1) Bonds may be issued for the purpose of refunding any obligations issued under this chapter or otherwise.

(2) The refunding bonds may be combined with bonds issued under the provisions of § 27-70-314 [repealed] into a single issue.



(b)(1) When bonds are issued under this section for refunding purposes, the bonds may either be sold or delivered in exchange for the outstanding obligations.

(2) If sold, the proceeds may, either at maturity or upon any authorized redemption date, be either:

(A) Applied to the payment of the obligations refunded; or

(B) Deposited in escrow for the retirement thereof.

(c)(1) All bonds issued under this section shall in all respects be authorized, issued, and secured in the manner provided for other bonds issued under this chapter and shall have all the attributes of such bonds.

(2) The resolution or indenture under which the refunding bonds are issued may provide that any of the refunding bonds shall have the same priority of lien on the revenues pledged for their payment as was enjoyed by the obligations refunded thereby.

**History.** Acts 2007, No. 389, § 1.

### **27-76-610. Interim bonds.**

(a) Before issuing definitive bonds, a regional mobility authority may issue interim bonds with or without coupons exchangeable for definitive bonds.

(b) The interim bonds may be authorized and issued in accordance with this chapter without regard to a requirement, restriction, or procedural provision in any other law.

(c)(1) A bond resolution authorizing interim bonds may provide that the interim bonds recite that the bonds are issued under this chapter.

(2) The recital is conclusive evidence of the validity and the regularity of the interim bonds' issuance.

**History.** Acts 2007, No. 389, § 1.

### **27-76-611. Revolving fund.**

(a) A regional mobility authority may maintain a revolving fund to be held in trust by a banking institution chosen by the regional mobility authority separate from any other funds and administered by the regional mobility authority's board of directors.

(b) A regional mobility authority may transfer into its revolving fund money from any permissible source, including:

(1) Funds from a transportation project if the transfer does not diminish the money available for the project to less than any amount required to be retained by the bond proceedings pertaining to the project;

(2) Funds received by the regional mobility authority from any source and not otherwise committed, including money from the transfer of a transportation project or system as provided under § 27-76-408 or the sale of surplus assets of the regional mobility authority;

(3) Funds received from the Arkansas State Highway and Transportation Department and the State Highway Commission; and

(4) Contributions, loans, grants, or assistance from any governmental entity, private entity, or person.

(c) The regional mobility authority may use money in the revolving fund to:

(1) Finance the acquisition, construction, maintenance, or operation of a transportation project of a regional mobility authority including the extension, expansion, or improvement of a transportation project;

(2) Provide matching money required in connection with any federal, state, local, or private aid, grant, or other funding, including aid or funding by or with public-private partnerships;

(3) Provide credit enhancement either directly or indirectly for bonds issued to acquire, construct, extend, expand, or improve a transportation project or a transportation system;

(4) Provide security for or payment of future or existing debt for the design, acquisition, construction, operation, maintenance, extension, expansion, or improvement of a transportation project or a transportation system;

(5) Borrow money and issue promissory notes or other indebtedness payable out of the revolving fund for any purpose authorized by this chapter; and

(6) Provide for any other reasonable purpose that assists in the financing of a regional mobility authority as authorized by this chapter.

(d)(1) Money spent or advanced from the revolving fund for a transportation project or a transportation system must be reimbursed from the money of that transportation project or transportation system.

(2) At the time that the expenditure or advancement is authorized, a reasonable expectation of repayment must exist.

**History.** Acts 2007, No. 389, § 1.

**SUBCHAPTER 7 — TOLLING**

SECTION.	SECTION.
27-76-701. Setting tolling fees, fare, and other charges on a toll facility project.	27-76-708. Requirement that an operator of a motor vehicle pay a toll.
27-76-702. Controlled access to toll facility projects.	27-76-709. Presumption that the registered owner was the operator.
27-76-703. Tolling power subject to voter approval.	27-76-710. General administrative procedure for collection of an unpaid toll.
27-76-704. Use of revenues — Revenue bonds.	27-76-711. Administrative procedure when the registered owner is a lessor.
27-76-705. Surplus revenue.	27-76-712. Administrative procedure when the registered owner is a transferor.
27-76-706. Arkansas State Highway and Transportation Department contributions to toll road projects.	27-76-713. Prosecution of failure to pay tolls.
27-76-707. Use and return of transponders.	

**27-76-701. Setting tolling fees, fare, and other charges on a toll facility project.**

(a) A regional mobility authority shall set tolls, fees, fares, or other charges at rates or amounts so that the aggregate of tolls, fees, fares, or other charges from the transportation project, together with other revenue of the project:

(1) Provides toll facility project revenue sufficient to pay:

(A) The toll facility project costs;

(B) The cost of maintaining, repairing, and operating the transportation project; and

(C) The principal of and interest on any bonds issued for the toll facility project as those bonds become due and payable; and

(2) Creates reserves for one (1) or more of the purposes stated under subdivision (a)(1) of this section.

(b) A toll, fee, fare, or other charge imposed on an owner of a public utility facility shall be imposed in a manner that is competitively neutral and nondiscriminatory among similarly situated users of the toll facility project.

(c) A toll, fee, fare, or other usage charge is not subject to supervision or regulation by any agency of this state or other governmental entity.

(d) Notwithstanding any of the provisions of this subchapter, a regional mobility authority's power to charge tolls for use of a toll facility project shall be subject to approval by the voters within the boundaries of the regional mobility authority as follows:

(1) Voter approval of the initial imposition of the tolls, including the initial toll rate by the regional mobility authority; and

(2) If revenue bonds are to be issued by the regional mobility authority to fund all or a portion of the costs of the toll facility project, voter approval of the development of the toll facility project, including the initial toll rate and the issuance of the maximum principal amount of bonded indebtedness.

**History.** Acts 2007, No. 389, § 1.

**27-76-702. Controlled access to toll facility projects.**

(a) A regional mobility authority may adopt a resolution that designates a toll road, a toll facility project, or a portion of a transportation project as a controlled-access toll road.

(b) A regional mobility authority may adopt a resolution to:

(1) Prohibit the use of or access to or from a toll road by a motor vehicle, bicycle, any other classification or type of vehicle, or a pedestrian;

(2) Deny access to or from:

(A) A toll road;

(B) Real property adjacent to a toll road; or

(C) A street, road, alley, highway, or other public or private way intersecting a toll road;



(3) Designate locations on a toll road at which access to or from the toll road is permitted;

(4) Control, restrict, and determine the type and extent of access permitted at a designated location of access to a toll road; or

(5) Erect appropriate protective devices to preserve the utility, integrity, and use of a toll road.

(c) A regional mobility authority may grant access to or from a toll facility.

**History.** Acts 2007, No. 389, § 1.

### **27-76-703. Tolling power subject to voter approval.**

The approval of the voters within the boundaries of the regional mobility authority is required to authorize the development of a toll facility, the initial toll rate, and the maximum amount of bonded indebtedness pledged thereto subject to the provisions of § 27-76-701(d).

**History.** Acts 2007, No. 389, § 1.

### **27-76-704. Use of revenues — Revenue bonds.**

(a)(1) Except as provided under subdivision (a)(3) of this section, a regional mobility authority that has issued revenue bonds for a toll facility project or a transportation project and that is financed with dedicated revenue derived from tolls, fees, fares, or other funds shall set aside moneys into a sinking fund that is pledged to and charged with the payment of:

(A) Interest on the bonds as it becomes due;

(B) Principal of the bonds as it becomes due;

(C) Necessary charges of paying agents for paying principal and interest;

(D) The redemption price or the purchase price of bonds retired by call or purchase as provided in the bond proceedings; and

(E) Any amounts due under credit agreements.

(2) Moneys shall be set aside into a sinking fund at regular intervals and as provided in the bond resolution or trust agreement.

(3) A regional mobility authority may retain the funds necessary to pay the cost of maintenance, repair, and operation and to provide reserves for those costs as provided in the bond proceedings.

(b) The use and disposition of money deposited to the credit of the sinking fund is subject to the bond proceedings.

**History.** Acts 2007, No. 389, § 1.

**27-76-705. Surplus revenue.**

(a) Each year, a regional mobility authority shall determine whether it has surplus revenue from tolls, fees, or fares collected from the operation of its transportation projects.

(b) If a regional mobility authority determines that it has surplus revenue, then it shall either:

(1) Reduce the tolls, fees, or fares; or

(2) Spend the surplus revenue on other transportation projects in the counties or municipalities within the jurisdictional boundaries of the regional mobility authority as provided under subsection (c) of this section.

(c) Consistent with other laws and the rules and resolutions of the regional mobility authority, a regional mobility authority may spend surplus revenue on other transportation projects by:

(1) Constructing a transportation project located within the county or counties of the authority;

(2) Assisting in the financing of a toll or toll-free transportation project of another governmental entity; or

(3) Constructing a toll or toll-free transportation project and, on completion of the project, transferring the project to another governmental entity if:

(A) The other governmental entity authorizes the regional mobility authority to construct the project and agrees to assume all liability and responsibility for the maintenance and operation of the project on its transfer; and

(B) The project is constructed in compliance with all laws applicable to the governmental entity.

**History.** Acts 2007, No. 389, § 1.

**27-76-706. Arkansas State Highway and Transportation Department contributions to toll road projects.**

(a)(1) A regional mobility authority and the Arkansas State Highway and Transportation Department and the State Highway Commission may agree to allow the department to contribute to the payment of costs of any of the following in regards to a toll road:

(A) A financial study;

(B) An engineering study;

(C) A traffic feasibility study; or

(D) The design, financing, acquisition, construction, operation, or maintenance of a toll road.

(2) The agreement shall not be inconsistent with the rights of the bondholders or persons operating the toll road under a lease or other contract.

(b) The department may use its engineering or other personnel, including consulting engineers or traffic engineers, to conduct feasibility studies under subsection (a) of this section.

(c)(1) An obligation or expense incurred by a regional mobility authority or the department under this section is a part of the cost of the toll road for which the obligation or expense was incurred.

(2) A regional mobility authority may require money contributed under this section to be repaid from tolls or other revenue of the toll road on which the money was spent.

(3) Money repaid as required by a regional mobility authority or the department shall be deposited to the credit of the fund from which the contribution was made.

(d) A regional mobility authority or the department may use federal money for any purpose described by this chapter.

(e) A toll road developed by a regional mobility authority shall not be part of the state highway system unless the regional mobility authority and the commission so agree.

(f)(1) The commission may grant or loan department money to a regional mobility authority for the acquisition of land for the construction, maintenance, or operation of a toll road.

(2) The commission may require the authority to repay money provided under this section from toll revenue or other sources on terms established by the commission.

(g) Money repaid as required by the commission shall be deposited to the credit of the fund from which the money was provided.

**History.** Acts 2007, No. 389, § 1.

### **27-76-707. Use and return of transponders.**

A regional mobility authority may promulgate rules regarding the use and return of transponders.

**History.** Acts 2007, No. 389, § 1.

### **27-76-708. Requirement that an operator of a motor vehicle pay a toll.**

(a)(1) Except as provided under subdivisions (a)(2) and (3) of this section, the operator of a vehicle that is driven or towed through a toll collection facility of a toll road owned by a regional mobility authority shall pay the proper toll.

(2) An authorized emergency vehicle as defined under § 27-49-219(d) is not required to pay a toll.

(3) A regional mobility authority may waive the requirement of the payment of a toll or may authorize the payment of a reduced toll for any vehicle or class of vehicles.

(b)(1) A violation of this section is an administrative offense and a Class B misdemeanor.

(2) The regional mobility authority or its designee shall attempt collection of the unpaid toll through the administrative procedures under §§ 27-76-710 — 27-76-712 before pursuing prosecution under § 27-76-713.



(3) If the regional mobility authority or its designee is unable to collect an unpaid toll through administrative procedures, then the matter shall be transferred to the appropriate prosecuting attorney.

**History.** Acts 2007, No. 389, § 1.

**27-76-709. Presumption that the registered owner was the operator.**

Except as provided under §§ 27-76-711 and 27-76-712, there is a rebuttable presumption that the registered owner of the motor vehicle was the operator of the motor vehicle when the offense occurred.

**History.** Acts 2007, No. 389, § 1.

**27-76-710. General administrative procedure for collection of an unpaid toll.**

(a)(1) The regional mobility authority or its designee may attempt to collect an unpaid toll under § 27-76-708 and an administrative fee to recover the cost of collecting the unpaid toll.

(2) The administrative fee shall not exceed one hundred dollars (\$100).

(3) The registered owner shall pay a separate toll and administrative fee for each occurrence of nonpayment under this subsection (a).

(b)(1) Upon the occurrence of the offense of failure to pay a toll, the regional mobility authority or its designee shall issue to the registered owner of the motor vehicle a written notice of nonpayment of the toll.

(2) The notice of nonpayment shall:

(A) Include a statement of the amount of the toll charges and the amount of the administrative fee for which the registered owner of the motor vehicle is liable;

(B) Be sent by first-class mail to the registered owner's address as shown in the motor vehicle registration records maintained by the Department of Finance and Administration;

(C) Be sent not later than thirty (30) days after the date of the alleged failure to pay; and

(D) State that payment is not required until thirty (30) days after the date that the notice was mailed.

**History.** Acts 2007, No. 389, § 1.

**27-76-711. Administrative procedure when the registered owner is a lessor.**

(a) If the registered owner of the motor vehicle is the lessor of a vehicle and the lessor claims it is not liable for an unpaid toll under § 27-76-708 because the vehicle was under a rental contract on the date the offense of nonpayment occurred, then the procedures of this section apply.

(b)(1) Not later than thirty (30) days after the date that the notice of nonpayment was mailed to the registered owner, the lessor shall provide to the regional mobility authority or its designee a copy of the rental, lease, or other contract document covering the vehicle on the date of the nonpayment under subsection (a) of this section.

(2) The name and address of the lessee shall be clearly legible on the documents provided to the regional mobility authority or its designee.

(c)(1) If the lessor provides the required information within the prescribed period, the regional mobility authority or its designee shall send a notice of nonpayment to the lessee.

(2) The notice of nonpayment shall:

(A) Include a statement of the amount of the toll charges and the amount of administrative fee for which the lessee of the motor vehicle is liable;

(B) Be sent by first-class mail to the lessee's address as shown on the rental, lease, or other contract document provided by the lessor;

(C) Be sent not later than thirty (30) days after the date of receipt of the required information from the lessor; and

(D) State that payment is not required until thirty (30) days after the date that the notice was mailed.

(d) The lessee shall pay a separate toll and administrative fee for each event of nonpayment.

**History.** Acts 2007, No. 389, § 1.

## **27-76-712. Administrative procedure when the registered owner is a transferor.**

(a) If the registered owner of a motor vehicle that was mailed notice of nonpayment of a toll under this section transferred ownership of the vehicle to another person before the offense of an unpaid toll under § 27-76-708 occurred, then the procedures of this section apply.

(b)(1) Not later than thirty (30) days after the date that the notice of nonpayment was mailed to the transferor of the motor vehicle, the transferor shall submit to the regional mobility authority or its designee a bill of sale or supporting documentation for the transfer of ownership.

(2) The name and address of the person in which the motor vehicle was transferred shall be clearly legible on the documents provided to the regional mobility authority or its designee.

(c)(1) If the transferor of the motor vehicle provides the required information within the prescribed period, the regional mobility authority or its designee shall send a notice of nonpayment to the transferee.

(2) The notice of nonpayment shall:

(A) Include a statement of the amount of the toll charges and the amount of administrative fee for which the transferee is liable;

(B) Be sent by first-class mail to the transferee's address as shown in the bill of sale or supporting documentation;

(C) Be sent not later than thirty (30) days after the date of receipt of the required information from the transferor; and

(D) State that payment is not required until thirty (30) days after the date that the notice was mailed.

(d) The transferee shall pay a separate toll and administrative fee for each event of nonpayment.

**History.** Acts 2007, No. 389, § 1.

### **27-76-713. Prosecution of failure to pay tolls.**

(a) In the prosecution of a violation of § 27-76-708, the prosecuting attorney shall establish that:

(1) The vehicle passed through a toll collection facility without payment of the proper toll; and

(2) The defendant was either of the following when the failure to pay the toll occurred:

(A) The registered owner of the motor vehicle; or

(B) The operator of the motor vehicle.

(b) The court may consider sworn testimony from any of the following:

(1) A law enforcement officer;

(2) A regional mobility authority employee;

(3) An employee of the designee of the regional mobility authority; or

(4) An employee of the Department of Finance and Administration.

(c) The court may consider any other reasonable evidence, including without limitation:

(1) Video surveillance; or

(2) Evidence obtained by automated enforcement technology.

(d) It is a defense to prosecution under this section that the motor vehicle in question was stolen before the failure to pay the proper toll occurred and was not recovered by the time of the failure to pay, but only if the theft was reported to the appropriate law enforcement authority before the earlier of:

(1) The occurrence of the failure to pay; or

(2) Eight (8) hours after the discovery of the theft.

(e) A person who pleads guilty or nolo contendere to or is found guilty of violating § 27-76-708 is guilty of a Class B misdemeanor.

(f) The court in which a person is convicted of an offense under this section shall also collect the proper toll and administrative fee and forward the toll and fee to the regional mobility authority.

**History.** Acts 2007, No. 389, § 1.



**CHAPTERS 77-84**

[Reserved]

***SUBTITLE 6. BRIDGES AND FERRIES*****CHAPTER 85  
GENERAL PROVISIONS****SECTION.**

27-85-101. Conservation of bridges.

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**Cross References.** Highways, § 27-64-101 et seq.

**Preambles.** Acts 1971, No. 249 contained a preamble which read: "Whereas, the State of Arkansas is lavishly endowed with water resources; and

"Whereas, it is a redoubtable problem to provide adequate fixed crossings over the State's numerous watercourses to serve the contemporary needs of socio-economic activities; and

"Whereas, these bridges are costly to build and to maintain, they will serve the State's road-users with safety, convenience and comfort for many years if properly maintained and protected from abuse; and

"Whereas, this problem of maintaining the structural integrity of these bridges, particularly those built in the first half of this century, is increasingly momentous and significant under the greatly changed

character and volume of use demanded by road-users of the second half of this century, use which in terms of the structure's original design is often abusive in effect;

"Now, therefore...."

**Effective Dates.** Acts 1971, No. 249, § 6: Mar. 9, 1971. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that there is an immediate need to control the widening gap between highway needs and highway revenues in Arkansas, which is a matter of grave concern to the General Assembly, and that by the immediate passage of this Act significant efforts to conserve those revenues and to retard the accrual of needs may be realized. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

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**27-85-101. Conservation of bridges.**

It is directed that the administrators of the various public highway, road, and street systems shall make every effort to conserve the safe function of the bridges under their jurisdiction pursuant to the findings and recommendations of the bridge safety inspections by the bridge inspection teams of the Arkansas State Highway and Transportation Department in accord with the national bridge inspection standards published in the Federal Register.

**History.** Acts 1971, No. 249, § 1; A.S.A. 1947, § 41-3364.

CHAPTER 86

BRIDGES

- SUBCHAPTER.
1. GENERAL PROVISIONS.

2. PRIVATE FRANCHISES.

3. TRANSPORTATION OF COTTON OVER TOLL BRIDGES.

RESEARCH REFERENCES

**ALR.** Liability of governmental entity for injury or death resulting from design, construction, or failure to warn of narrow bridge. 2 A.L.R.4th 635.

Personal injury liability of civil engineer for negligence in highway or bridge construction or maintenance. 43 A.L.R.4th 911.

**Am. Jur.** 39 Am. Jur. 2d, Highways, §§ 41-47, § 611 et seq.

**C.J.S.** 11 C.J.S., Bridges, § 1 et seq.

SUBCHAPTER 1 — GENERAL PROVISIONS

- SECTION.

27-86-101. Interstate toll bridges authorized.
- SECTION.

27-86-102. Mail carrier toll exemption.

27-86-103. Lights on toll bridges.

**Cross References.** Military forces entitled to free passage on toll bridges, § 12-62-409.

Toll bridge of improvement district becomes free bridge of state when all indebtedness paid, § 14-319-104.

**Effective Dates.** Acts 1933, No. 20, § 4: approved Feb. 8, 1933. Emergency clause provided: "This Act, being necessary for the immediate preservation of the public health, peace and safety, an emergency is hereby declared. That this Act shall take effect and be in force from and after its passage."

Acts 1935, No. 68, § 2: Feb. 20, 1935.

Acts 1939, No. 383, §§ 2, 3: approved Mar. 17, 1939. Emergency clause provided: "The urgent need for a bridge or bridges over and across the rivers and waters bordering this State, and the need on the part of the inhabitants of the State of Arkansas for the expenditures of such funds as may be necessary in the maintenance of such bridge or bridges, either in whole or in part, makes the enactment of this act into law necessary for the immediate preservation of public safety, convenience, and welfare of the inhabitants of this State. That this act take effect and be in force from and after the date of its passage."

27-86-101. Interstate toll bridges authorized.

The State Highway Commission is authorized to maintain, in whole or in part, highway toll bridges across rivers or waters bordering the State of Arkansas as a part of the state highway system.

**History.** Acts 1939, No. 383, § 1; A.S.A. 1947, § 76-610.

### **27-86-102. Mail carrier toll exemption.**

All carriers of the United States mails over a designated route shall, if the route crosses a state-owned toll bridge, be exempt and relieved from the payment of toll for the privilege of using and crossing the bridge. This exemption shall apply only while the operator is engaged in the performance of his or her official duties as a mail carrier in the postal service of the United States government.

**History.** Acts 1935, No. 68, § 1; Pope's Dig., § 6602; A.S.A. 1947, § 76-612.

### **27-86-103. Lights on toll bridges.**

(a) Provisions are made for the regulation of the number of lights or bulbs and the monthly and annual expenditures for electric lights on all toll bridges in the State of Arkansas.

(b)(1) No toll bridge in the State of Arkansas shall have more than four (4) electric lights or bulbs, known as navigation lights, except as otherwise provided for by the federal government.

(2) Each bulb or light shall not be in excess of seventy-five (75) watts.

(3) One (1) bulb shall be placed in the center of each bridge at the open end of the toll bridge or bridges, just above or in the center of a sign or poster, which name shall appear and be read and be known as "TOLL BRIDGE", and the bulb shall fully display the sign or poster at night of its purpose.

(4) The other end of the toll bridge where the toll house is located shall not have in excess of three (3) bulbs, one (1) in each driveway or on either side of the toll house, including one (1) inside the toll house or left to the discretion of the chief engineer of the Arkansas State Highway and Transportation Department.

(5) Should more lights or bulbs exist than those mentioned in this section, their installation shall be invalid and any person or persons installing more lights shall be responsible for their expense.

**History.** Acts 1933, No. 20, §§ 1-3; Pope's Dig., §§ 6598 — 6600; A.S.A. 1947, §§ 76-1609, 76-1610, 76-1610n.

## **SUBCHAPTER 2 — PRIVATE FRANCHISES**

#### **SECTION.**

- 27-86-201. Power to grant.
- 27-86-202. Control by county court.
- 27-86-203. Application — Notice — Hearing.
- 27-86-204. Appeal.
- 27-86-205. Franchise exclusive — Exception.

#### **SECTION.**

- 27-86-206. State's condemnation authority.
- 27-86-207. Damages upon condemnation by state.
- 27-86-208. Privileges granted jointly by two counties — Appeals.



## SECTION.

27-86-209. No franchise for toll bridge on state highway.

27-86-210. State purchase of private toll bridges — Construction of free bridges.

## SECTION.

27-86-211. Toll rates on privately owned bridges in state highway system.

**Preambles.** Acts 1938 (1st Ex. Sess.), No. 15 contained a preamble which read: "Whereas, it is the policy of the State to free both State owned and privately owned Toll Bridges; and

"Whereas, the State may now purchase the privately owned Toll Bridges in the State at a fair price; and

"Whereas, the State is financially able to buy such bridges without using therefor any of the highway funds;

"Therefore...."

**Effective Dates.** Acts 1928 (1st Ex. Sess.), No. 7, § 3: approved Oct. 3, 1928. Emergency clause provided: "It is ascertained and hereby declared that the operation of privately owned toll bridges on state highways is inimical to the policy of the state with reference to the state highway system, and is a detriment to the traveling public, and that the immediate operation of this act is essential for the protection of the public safety. An emergency is therefore declared, and this act shall take effect and be in force from and after its passage."

Acts 1929, No. 71, § 8: approved Mar. 1, 1929. Emergency clause provided: "It ap-

pearing that a large amount of gasoline or motor vehicle fuel tax is lost to the state by reason of excessive tolls charged on privately owned toll bridges; that said tax on gasoline or motor vehicle fuel is necessary for repair, construction, and maintenance of the state roads and bridges on same in order that same may be maintained in a safe condition for the traveling public, so that the immediate operation of this act is essential for the protection of the public safety and an emergency is therefore declared and this act shall take effect and be in force from and after its passage."

Acts 1938 (1st Ex. Sess.), No. 15, § 6: approved Apr. 1, 1938. Emergency clause provided: "Because of the fact that the State is attempting to free all bridges to the public, and this policy is vital to the interests of the people of the State, thereby preserving the public peace, health and safety, therefore an emergency is declared to exist and this act shall take effect and be in full force from and after its passage."

## 27-86-201. Power to grant.

(a) The several county courts through whose counties run any watercourse, lake, bay, or swamp which may be too burdensome to bridge and keep in repair by the inhabitants thereof are fully empowered to grant privileges to persons to build toll bridges over or turnpikes or causeways along them, or through any overflowed or wetland, whenever the interest of the county or the traveling public shall in their discretion demand the improvement.

(b) No privilege or franchise for the construction of a toll bridge over any navigable stream shall be effective until consent is obtained by the federal government for the construction of the bridge.

**History.** Acts 1927, No. 135, § 1; Pope's Dig., § 2615; A.S.A. 1947, § 76-1601.

**27-86-202. Control by county court.**

(a) The county court shall have a general superintending control of bridges, turnpikes, and causeways mentioned in this subchapter and the rates or tolls to be charged.

(b) The county court shall compel the bridges, turnpikes, and causeways to be kept in good repair at all times.

(c) The county court is required to fix the rate of tolls for crossing any bridge, turnpike, or causeway which may be built under the provision of this subchapter, the rates to be based on a reasonable return on the amount invested, having regard for reasonable operating expenses and reasonable depreciation.

(d) If, after granting the franchise or privilege and the rate of tolls fixed, it shall be made to appear that the rates fixed are inadequate to yield a fair return upon the investment or that the rates yield more than a fair return upon the investment, the county court shall have the right to revise the tolls as justice may require.

**History.** Acts 1927, No. 135, § 2; Pope's Dig., § 2616; A.S.A. 1947, § 76-1602. to be interested party in contracts concerning toll bridges, § 16-15-110.

**Cross References.** County judge not

**CASE NOTES****Tolls.**

A county court, in granting a franchise to build a toll bridge, could fix the tolls to be charged for the first 10 years of its life.

White River Bridge Co. v. Hurd, 159 Ark. 652, 252 S.W. 917 (1923) (decision under prior law).

**27-86-203. Application — Notice — Hearing.**

(a) Upon application being made to the county court for the granting of a franchise or privilege as herein provided, the applicant shall give notice by publication in some newspaper in the county or counties where the toll bridge, turnpike, or causeway is situated, having a bona fide circulation therein, once a week for two (2) weeks. The notice shall set forth the fact that application has been made for the granting of the franchise or privilege and give the name of the stream to be bridged or the location of the turnpike or causeway, and the date when the petition will be heard by the county court, which notice may be in the following form:

"Notice is hereby given that application has been made to the ..... County Court for the privilege of constructing a toll bridge, (turnpike or causeway as the case may be), which bridge, (turnpike or causeway) is located at ..... in ..... County, which petition will be heard by the county court on the ..... day of ....., 20...., at the hour of ....., ....M.

Name of applicant"

(b) Upon the date named in the notice, unless the hearing is continued for cause, the court shall hear all interested parties and in

the event the franchise or privilege is granted an order of the county court shall be made fixing the rates or tolls to be charged, which shall be entered of record.

**History.** Acts 1927, No. 135, § 3; Pope’s Dig., § 2617; A.S.A. 1947, § 76-1603.

CASE NOTES

ANALYSIS

Woollard, 186 Ark. 467, 53 S.W.2d 984 (1932).

Compliance Required.  
Notice.

**Notice.**

No notice of an application for a toll bridge franchise can be given until an application has been filed in the county court. Hunter v. Woollard, 186 Ark. 467, 53 S.W.2d 984 (1932).

**Compliance Required.**

To authorize a county court to a grant a toll bridge franchise, strict compliance with this section must be had. Hunter v.

**27-86-204. Appeal.**

Any interested party or any citizen of the county or counties to be affected may appeal from any order of the county court or courts provided for herein at any time within thirty (30) days from the rendition of the judgment and not thereafter; in the event of an appeal, the case shall be tried de novo by the circuit court as other cases appealed from the county court.

**History.** Acts 1927, No. 135, § 4; Pope’s Dig., § 2618; A.S.A. 1947, § 76-1604.

CASE NOTES

**Invalidity.**

In a proceeding on certiorari, a county court’s order and judgment granting a franchise to build a toll bridge could not be

held void where its invalidity did not appear from the face of the proceedings. Bell v. Conner, 176 Ark. 530, 3 S.W.2d 319 (1928) (decision under prior law).

**27-86-205. Franchise exclusive — Exception.**

(a) After conferring the privileges of this subchapter upon any person, no county court shall again have power to confer the same or like privileges upon any other person to the injury of him or her upon whom the privileges were first conferred.

(b) However, privileges or franchises shall not be exclusive and effective against any county, counties, or the state. All privileges or franchises granted hereunder shall be subject to the rights of the county, counties, or the state to condemn them and acquire the property and franchise by condemnation proceedings which shall be exercised under the right of eminent domain as the same is now exercised by railroad, telegraph, and telephone companies.



**History.** Acts 1927, No. 135, § 5; Pope's Dig., § 2619; A.S.A. 1947, § 76-1605.

**Cross References.** Condemnation proceedings by railroad, telegraph, and

telephone companies, § 18-15-1201 et seq.

Right of eminent domain, § 27-88-121.

## CASE NOTES

### ANALYSIS

Privilege Exclusive.

Reservation of Rights.

Value of Land.

### Privilege Exclusive.

The privilege granted by a county court to build a toll bridge over a navigable stream was exclusive and precluded the court from granting a ferry license to operate a ferry within one mile of the bridge. *White River Bridge Co. v. Hurd*, 159 Ark. 652, 252 S.W. 917 (1923) (decision under prior law).

### Reservation of Rights.

Where a county court reserved the right to grant to any other person the privilege to build a bridge or to operate a ferry at a certain point within a distance otherwise set aside exclusively for a toll bridge franchise, the court could have authorized any

person to either build a bridge or operate a ferry, and such a person could have sold his rights to a purchaser, including the state or county, upon terms satisfactory to himself, whereupon the purchaser could have operated the bridge or ferry with toll charges or for free. *Arkansas State Hwy. Comm'n v. Butler*, 105 F.2d 732 (8th Cir. 1939) (decision under prior law).

### Value of Land.

In a suit by a bridge district to condemn land for a bridge site, it was not error to refuse to permit the landowner to prove the value of the land taken upon the assumption that his ferry franchise resulting from ownership of land on the opposite banks of the river was perpetual and that he was entitled to recover the loss of profits and future earnings from the ferry. *Desha v. Independence County Bridge Dist.*, 179 Ark. 561, 18 S.W.2d 337 (1929).

## 27-86-206. State's condemnation authority.

(a) The State Highway Commission, with the approval of the Governor and Attorney General of the state, is vested with authority to sue in the name of the state for the condemnation of any bridge, turnpike, or causeway which in their judgment should be acquired by the state.

(b) County judges are vested with authority to enter suit for condemnation on relation of the county or counties affected.

**History.** Acts 1927, No. 135, § 6; Pope's Dig., § 2620; A.S.A. 1947, § 76-1606.

## 27-86-207. Damages upon condemnation by state.

(a) In the event condemnation proceedings are instituted as herein provided by any county, counties, or the state, for the condemnation of property and franchise or privilege, the future value of any privilege or franchise or any prospective profits shall not be considered as an element of damage in the condemnation and purchase of the property.

(b) The amount of compensation or damage shall not exceed the actual cost of the bridge, turnpike, or causeway, the site for it, necessary improvements, and the moneys expended on approaches leading to the bridge and a reasonable amount expended for promotion and financing, less actual depreciation.

**History.** Acts 1927, No. 135, § 7; Pope's Dig., § 2621; A.S.A. 1947, § 76-1607.

### **27-86-208. Privileges granted jointly by two counties — Appeals.**

(a) Where the watercourse is on the boundary line between counties, the county courts of the counties may act jointly in granting the privileges and exercising the powers conferred by this subchapter.

(b) Publication of notice shall be made in each county.

(c) The circuit court first acquiring jurisdiction of an appeal from the order of either county court shall also have jurisdiction of all appeals from the order of the other county court, and appeals shall be at once transferred to the circuit court first acquiring jurisdiction.

**History.** Acts 1927, No. 135, § 8; Pope's Dig., § 2622; A.S.A. 1947, § 76-1608.

### **27-86-209. No franchise for toll bridge on state highway.**

No franchise shall be granted to any person, firm, or corporation to operate a toll bridge on any road in the state highway system.

**History.** Acts 1928 (1st Ex. Sess.), No. 7, § 1; Pope's Dig., § 6601; A.S.A. 1947, § 76-605.

### **27-86-210. State purchase of private toll bridges — Construction of free bridges.**

(a) The State Highway Commission is authorized and empowered to purchase any or all of the privately owned toll bridges in the State of Arkansas at prices to be fixed by the commission in accordance with rules and regulations to be promulgated by the commission.

(b) Where it is not possible to purchase any privately owned toll bridges, then the commission is authorized to construct bridges at places where there are now operated any privately owned toll bridges.

(c) The purchase of each bridge shall include the right-of-way, franchise, and license, if any, and all right, title, and interest and claim of the owner in and to it together with all appurtenances thereunto belonging.

(d) No money shall be paid over on the purchase of a toll bridge under authority of this section until there has been a conveyance by the owner to the State of Arkansas of the bridge proper together with approaches, right-of-way, license, franchise, and whatever other outstanding claim, right, title, or interest there may be in the bridge, to the end that the state may completely own and control the bridge and that the public may use it free of toll.

(e) The state shall repair and maintain all bridges purchased by authority of this section in the same manner that it now or may hereafter repair and maintain bridges which are parts of the state highway system.

**History.** Acts 1938 (1st Ex. Sess.), No. 15, §§ 2-5; 1939, No. 276, § 1; A.S.A. 1947, §§ 76-606 — 76-609.

### CASE NOTES

#### ANALYSIS

Authority of Commission.  
Eminent Domain.  
Injunctions.

#### Authority of Commission.

The State Highway Commission was authorized by Acts 1927, No. 104 to take possession of the Harahan viaduct and operate it as a toll bridge. *Schevenell v. Blackwood*, 35 F.2d 421 (8th Cir. 1929) (decision under prior law).

#### Eminent Domain.

The right of eminent domain in the State Highway Commission was held sub-

ordinate to the right of property owners to be compensated for damages to their property by the construction of a highway bridge and approaches thereto. *Campbell v. Arkansas State Hwy. Comm'n*, 183 Ark. 780, 38 S.W.2d 753 (1931) (decision under prior law).

#### Injunctions.

A taxpayer seeking to enjoin the State Highway Commission from building a bridge was not in a position to complain where he did not claim that his land was about to be taken. *Connor v. Blackwood*, 176 Ark. 139, 2 S.W.2d 44 (1928) (decision under prior law).

### 27-86-211. Toll rates on privately owned bridges in state highway system.

(a) The State Highway Commission is empowered to fix and enforce the schedule or rate of tolls to be collected on any privately owned toll bridge located on any road embraced in the state highway system.

(b) In fixing schedules or rates, regard shall be had to the interests of the owner and the public so that the owner shall be allowed to collect such rates as shall afford him or her a fair return on the value of his or her property, and the public shall not be required to pay more than is required to net such return.

(c) As the state is spending millions of dollars in building roads, not only to serve its own citizens but to induce tourists to visit the state, and as a certain percent of tourists will buy land and become citizens, the state should protect the interests of the public against those who operate toll bridges that injure the state as a whole by charging tolls to pay interest and dividends on watered bonds and stock. One of the purposes of this section is to grant protection to the state and the public.

(d) All suits involving the validity of this section or any portion thereof shall be deemed matters of public interest and shall be advanced and disposed of at the earliest possible moment. Appeals in these suits must be taken and perfected within thirty (30) days from the date of the judgment or decree.

**History.** Acts 1929, No. 71, §§ 4-6; Pope's Dig., §§ 6595-6597; A.S.A. 1947, §§ 76-602 — 76-604.

**Publisher's Notes.** Acts 1929, No. 71,

§ 7, provided that the act did not repeal any portion of Acts 1927, Nos. 104 and 135, or Acts 1928 (1st Ex. Sess.), No. 7.



**SUBCHAPTER 3 — TRANSPORTATION OF COTTON OVER TOLL BRIDGES**

## SECTION.

27-86-301. Records.

27-86-302. Application to state bridges.

27-86-303. Transporter's failure to furnish information — Penalty.

## SECTION.

27-86-304. Operator's failure to keep record — Penalty.

27-86-305. Mandamus.

27-86-306. No charge.

**Cross References.** Transportation of cotton on ferries, § 27-87-107.

**Effective Dates.** Acts 1943, No. 275, § 9: Mar. 18, 1943. Emergency clause provided: "Many citizens of the State have been deprived of substantial property rights by reason of the failure of the operators of toll bridges to maintain records

provided for in this act and such injustices will continue unless prevented. An emergency is, therefore, found to exist; and, this act being necessary for the peace and safety of the citizens of the State, the same shall be in full force and effect from and after its passage and approval."

**27-86-301. Records.**

(a) It shall be the duty of every person, firm, or corporation owning or operating any toll bridge within or partially within the State of Arkansas to make, maintain, and preserve a record of every bale of cotton or part of a bale of cotton, whether seed cotton or lint cotton, which shall cross the toll bridge.

(b) The record shall contain the following data:

(1) The date, together with the hour of the day, the cotton passed over the toll bridge;

(2) The destination of the cotton as declared by the person transporting the cotton across the bridge;

(3) The name of the persons transporting the cotton across the bridge together with the name and address of the persons for whom the cotton is being so transported;

(4) A general description of the vehicle in which the cotton is being transported, that is, whether by motor vehicle or otherwise. If transported by motor vehicle, the record shall show the state license number and the city license number, if any, of the motor vehicle;

(5) The approximate amount of cotton transported in terms of bales or parts of bales as nearly as can be determined without weighing;

(6) The point of origin of the cotton; that is, if the cotton is in bales, the name and location of the gin where the cotton was ginned and, if seed cotton, the approximate location of the farm on which the cotton was produced. This information shall be supplied by the persons so transporting the cotton; and

(7) The name and address of every person, firm, or corporation having any interest in the cotton either by ownership or lien so far as known to the person or persons transporting the cotton.

(c) The records made and maintained pursuant to this subchapter shall be open to inspection by any person at all reasonable times at the place of business maintained by the owner or operator within the State of Arkansas.

**History.** Acts 1943, No. 275, §§ 1, 4; A.S.A. 1947, §§ 76-1611, 76-1614.

### **27-86-302. Application to state bridges.**

It is expressly declared that this subchapter shall apply to all toll bridges owned or operated by the State of Arkansas or any of its agencies.

**History.** Acts 1943, No. 275, § 2; A.S.A. 1947, § 76-1612.

### **27-86-303. Transporter's failure to furnish information — Penalty.**

Any person transporting cotton across a toll bridge as specified in this subchapter who shall willfully and knowingly fail or refuse to furnish the information set forth in § 27-86-301 to the owner or operator of the toll bridge or who shall willfully and knowingly furnish false information with respect thereto, shall be fined in any sum not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500) or imprisoned for a period not less than thirty (30) days nor more than one (1) year or may be both fined and imprisoned as provided in this subchapter.

**History.** Acts 1943, No. 275, § 5; A.S.A. 1947, § 76-1615.

### **27-86-304. Operator's failure to keep record — Penalty.**

(a) Any owner or operator of any toll bridge, except the State of Arkansas, shall be punished as set forth in subsection (b) of this section if he or she shall knowingly and willfully:

- (1) Fail or refuse to procure the data set forth in § 27-86-301;
- (2) Fail or refuse to keep and maintain this record; or
- (3) Fail to permit this record to be inspected by any interested party as herein provided.

(b) Upon conviction, the owner or operator shall be fined in any amount not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500) or imprisoned for a period not less than thirty (30) days nor more than one (1) year, or he or she may be both fined and imprisoned as provided herein.

**History.** Acts 1943, No. 275, § 6; A.S.A. 1947, § 76-1616.

**27-86-305. Mandamus.**

The State Highway Commission or other agency of the state having charge of the operation of any state-owned toll bridge may be compelled to carry out the provisions of this subchapter as to any state-owned toll bridge by mandamus proceedings filed by any citizen of the state in the circuit court of the county in which the state-owned toll bridge, or any part thereof, is operated.

**History.** Acts 1943, No. 275, § 7; A.S.A. 1947, § 76-1617.

**27-86-306. No charge.**

It shall be unlawful for the owner or operator of a toll bridge to make any charge against the person so transporting cotton by reason of the provisions of this subchapter.

**History.** Acts 1943, No. 275, § 3; A.S.A. 1947, § 76-1613.

## CHAPTER 87

### FERRIES

#### SUBCHAPTER

1. GENERAL PROVISIONS.
2. LICENSE AND PRIVILEGE TAX.
3. BONDS.
4. RATES.

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### RESEARCH REFERENCES

**Am. Jur.** 35 Am. Jur. 2d, Ferries, § 1 et seq.      **C.J.S.** 36A C.J.S., Ferries, § 1 et seq.

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#### SUBCHAPTER 1 — GENERAL PROVISIONS

##### SECTION.

- 27-87-101. Definitions.  
27-87-102. Ferrykeeper's neglect of duty  
— Penalties.  
27-87-103. Public ferry on private  
stream.

##### SECTION.

- 27-87-104. Eligibility to keep ferry.  
27-87-105. Exclusiveness of privilege.  
27-87-106. State establishment and op-  
eration.  
27-87-107. Record of cotton shipments.



**Cross References.** Military forces entitled to free passage on ferries, § 12-62-409.

**Effective Dates.** Acts 1843, § 11, p. 109: effective on passage.

Acts 1873, No. 31, § 30: effective on passage.

Acts 1913, No. 50, § 2: effective on passage. Emergency declared. Approved Feb. 13, 1913.

Acts 1943, No. 116, § 5: approved Feb. 26, 1943. Emergency clause provided: "Whereas, the rationing of gasoline and tires has reduced travel upon the State

Highways to such a point that many privately owned ferries serving traffic on State Highways are being forced to discontinue such service; and

"Whereas, the discontinuance of such service will work a great hardship upon the traveling public and tend to reduce the State revenues an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall take effect and be in full force from and after its passage."

## 27-87-101. Definitions.

As used in this chapter, unless the context otherwise requires:

(1) "Public ferries" means all ferries upon or over any public navigable streams in this state; and

(2) "Navigable streams" includes all lakes within this state that have been meandered in making the public surveys of the United States lands and retained as public property by the United States.

**History.** Rev. Stat., ch. 62, §§ 1, 3; C. & M. Dig., §§ 4693, 4695; Pope's Dig., §§ 5792, 5794; A.S.A. 1947, §§ 76-1701, 76-1703.

## CASE NOTES

### Public Ferries.

All ferries upon or over public navigable streams shall be deemed public ferries. *Bell v. Clegg*, 25 Ark. 26 (1867); *Finley v. Shemwell*, 94 Ark. 190, 126 S.W. 717 (1910); *Shults v. Munn*, 124 Ark. 415, 187 S.W. 316 (1916).

Where person owned a boat which he used for the transportation of himself and

his teams across a river, but did not hold himself out as operating a public ferry, and while he and his ferryman often transported others across the river, he never made any charge therefor, the person did not operate a public ferry. *St. Paul Fire & Marine Ins. Co. v. Harrison*, 140 Ark. 158, 215 S.W. 698 (1919).

## 27-87-102. Ferrykeeper's neglect of duty — Penalties.

(a) Any person detained at any public ferry by reason of the ferrykeeper not having sufficient boats or other proper craft and hands to work it, or by neglecting his or her duty in any way, may make application to a justice of the peace in the township where the ferry is located for a warrant of arrest.

(b) The justice of the peace is required to issue the warrant of arrest and impose a fine on the ferrykeeper, not exceeding twenty-five dollars (\$25.00), as the justice of the peace may find just and equitable.

(c) The fine shall not extend to, or be deemed a bar to, any action for personal damages sustained by any person or persons by reason of the insufficiency of the ferry or boats.

**History.** Acts 1873, No. 31, § 19 (in part), p. 53; C. & M. Dig., §§ 4715, 4716; Pope's Dig., §§ 5814, 5815; A.S.A. 1947, § 76-1716.

### CASE NOTES

#### ANALYSIS

Duty of Ferrykeepers.  
Prosecution for Offense.

#### **Duty of Ferrykeepers.**

The public grant of the exclusive privilege of ferrying is upon the consideration that the traveling public shall be crossed at all reasonable hours without unneces-

sary delay at all stages of water. *Jabine & Woodruff v. Midgett*, 25 Ark. 474 (1869).

#### **Prosecution for Offense.**

This section creates a public offense, for which a ferrykeeper may be prosecuted in circuit court by indictment, without prosecution by the party detained, as well as at his instance before a justice of the peace. *State v. Sewell*, 45 Ark. 387 (1885).

### **27-87-103. Public ferry on private stream.**

(a) Where a public road crosses any private stream which has not been meandered as a navigable stream, the bed of which may belong to any individual, if in the opinion of the county court, the public convenience will be promoted thereby, the court may make an order upon its record to that effect, declaring the crossing to be a public ferry.

(b) And when so declared by the county court, the ferry shall be and remain a public ferry during the pleasure of the court and be subject to all the regulations and restrictions that are made by law applicable to public ferries on navigable streams.

**History.** Rev. Stat., ch. 62, § 21; C. & M. Dig., § 4721; Pope's Dig., § 5820; A.S.A. 1947, § 76-1726.

### **27-87-104. Eligibility to keep ferry.**

(a) Every person owning the land fronting on any public navigable stream shall be entitled to the privilege of keeping a public ferry over or across the navigable stream if that person:

- (1) Owns the land on both sides or banks; or
- (2) Shall have possession of both sides or banks by preemption or settlement right and shall be entitled to the sole and exclusive right of ferriage at that place.

(b) If the person owns the lands on one (1) side only, or has possession thereof by preemption or settlement right, he or she shall have the privilege of:

- (1) A public ferry from his or her own shore;
- (2) Making the landing and road up the opposite bank;
- (3) Keeping them at all times in good repair and condition for ascending and descending; and
- (4) An exclusive right to all ferry privileges in any such case shall follow any leasehold interest during the life of the lease and the faithful performance of all municipal, county, and state obligations.

(c) The right shall not be impaired by any packet trade or company, or otherwise, under penalty of one hundred dollars (\$100) fine of any owner or manager of the packet enterprise or the party in any way violating the spirit or letter hereof, to be recovered by appropriate action in any court having jurisdiction, at the instance of the injured party.

(d) Each day's interference shall constitute a separate offense.

**History.** Rev. Stat., ch. 62, § 2; Acts § 4694; Pope's Dig., § 5793; A.S.A. 1947, 1913, No. 50, § 1, p. 163; C. & M. Dig., § 76-1702.

## CASE NOTES

### ANALYSIS

Construction.

Effect of Amendments.

Exclusive Rights.

Exercise of Rights.

Ferry Cables.

Municipal Regulation.

Preemption Rights.

Relinquishment of Rights.

### Construction.

There is no repugnancy between this section and the laws relating to toll bridges. *McClintock v. White River Bridge Co.*, 171 Ark. 943, 287 S.W. 163 (1926).

### Effect of Amendments.

The 1913 amendment of this section did not repeal other laws relating to ferries. *McClintock v. White River Bridge Co.*, 171 Ark. 943, 287 S.W. 163 (1926).

### Exclusive Rights.

The preference right to keep a public ferry is given to the person owning land fronting on any navigable stream, and if he owns or controls the land on both banks, he is entitled to the exclusive right of ferriage at such place. *Ex parte Grayson*, 169 Ark. 984, 277 S.W. 538 (1925).

### Exercise of Rights.

While ownership of lands on one or both sides of a navigable stream entitles the owner to the privilege of keeping a public ferry, the right cannot be exercised without procuring a license from the county court. *Finley v. Shemwell*, 94 Ark. 190, 126 S.W. 717 (1910).

### Ferry Cables.

This section does not authorize a person to attach the end of his ferry cable to

another's land on the opposite side of the stream. *Lake v. Combs*, 84 Ark. 21, 104 S.W. 544 (1907).

### Municipal Regulation.

A city is authorized to regulate ferries, and when only one bank of a stream where landing is made is within the limits of the municipal corporation, it may regulate the ferry. *Arkadelphia Lumber Co. v. City of Arkadelphia*, 56 Ark. 370, 19 S.W. 1053 (1892).

### Preemption Rights.

A valid preemption right to the land lying on one bank only of a river does not entitle the owner to the exclusive privilege of keeping a public ferry. Such right, accompanied by possession, would entitle him to the privilege of having a public ferry from the shore on which his own land was situated. *Cloyes v. Keatts*, 18 Ark. 19 (1856).

### Relinquishment of Rights.

Where a person and those under whom he claimed, owning both banks of a river, had kept a ferry under proper licenses, but for 20 years another person had kept a ferry under license a short distance above the place where the first person had kept it and where he owned both sides of the river for the same uses and at the crossing of the same road, and from the time the second person took charge of the ferry the first person procured no license nor exercised any ferry privilege, the first person relinquished his right and therefore the second person was entitled to an exclusive right to keep the ferry. *Brearily v. Norris*, 23 Ark. 514 (1861).



**27-87-105. Exclusiveness of privilege.**

The county court shall not permit any ferry to be established within one (1) mile above or below any ferry previously established, except at or near cities and towns where the public convenience may require it and satisfactory proof of the need shall be first adduced.

**History.** Acts 1843, § 8, p. 109; C. & M. Dig., § 4713; Pope's Dig., § 5812; A.S.A. 1947, § 76-1714.

**CASE NOTES****ANALYSIS****In General.**

Abandonment of Ferries.  
Discontinuance of Ferries.  
Equitable Relief.  
Failure to Provide Service.  
Free Ferries.  
Private Use of Boats.  
Public Convenience.  
Tolls.

**In General.**

The ownership of land on both sides of a navigable stream entitles the owner to the privilege of operating a ferry under license from the county court, and when the court has once granted the privilege of keeping a public ferry, the privilege is exclusive within the distance, so long as it is exercised under an annual grant of license. *Crane v. Jackson*, 116 Ark. 100, 172 S.W. 890 (1915).

**Abandonment of Ferries.**

The operation of another ferry will not be enjoined where a previously established ferry has been abandoned. *Finley v. Shemwell*, 94 Ark. 190, 126 S.W. 717 (1910).

**Discontinuance of Ferries.**

A county court has discretion to discontinue a ferry. *Shemwell v. Finley*, 95 Ark. 342, 129 S.W. 792 (1910).

**Equitable Relief.**

One whose ferry franchise has been infringed upon could have redress in chancery. *Crane v. Jackson*, 116 Ark. 100, 172 S.W. 890 (1915).

Where a number of persons organize a company to operate a ferry for their own use across a navigable stream, the operation of the ferry could be enjoined at the

suit of one operating a regularly licensed ferry at the same point. *Ramsey v. Nevills*, 133 Ark. 93, 201 S.W. 805 (1918).

**Failure to Provide Service.**

Where a ferrykeeper fails to provide adequate service for the needs of the community, he will be held to have temporarily abandoned the ferry to the extent that he is not entitled to equitable relief to restrain others from operating a ferry to meet the needs of the community. *Crane v. Jackson*, 116 Ark. 100, 172 S.W. 890 (1915).

**Free Ferries.**

County courts have power to establish free ferries, but not at, or within, the prohibited distance of the licensed ferry of another. *In re Howell*, 36 Ark. 466 (1880).

**Private Use of Boats.**

A ferry license does not give the licensee a right to enjoin citizens from using their own boats upon the stream within a mile either way from his ferry, in crossing themselves, their families, employees, guests, or occasionally friends, at their will, or occasionally lending boats to each other for such purposes. *Hunter v. Moore*, 44 Ark. 184 (1884).

**Public Convenience.**

Where the county court permits a ferry to be established at or near a town within one mile of a ferry previously established, the question of whether public convenience requires the establishment of the rival ferry is necessarily passed upon and determined by the court. *Lindsay v. Lindley*, 20 Ark. 573 (1859).

**Tolls.**

No one except a licensed ferrykeeper is authorized to take tolls for crossing passengers within the limits of the ferry franchise. *Hunter v. Moore*, 44 Ark. 184 (1884).

**27-87-106. State establishment and operation.**

(a) In all cases hereafter existing in which a privately owned ferry serving traffic upon any state highway is discontinued, leaving no means of crossing available to the public, the State Highway Commission is authorized to establish and maintain ferry service at that point.

(b) To the end of providing ferry service, the State Highway Commission is authorized to acquire by negotiation, purchase, or exercise of eminent domain any required sites for landings or other needed acreage and to purchase or construct ferry boats and all facilities needed in the operation of the ferries.

(c) The ferries as provided shall be operated free of tolls to the public and shall be operated in the manner and at the hours as the State Highway Commission may from time to time prescribe.

(d) No portion of §§ 27-87-101 — 27-87-105, 27-87-201 — 27-87-209, 27-87-301 — 27-87-303, and 27-87-401 — 27-87-403 shall apply to the free ferries installed and operated by the State Highway Commission hereunder.

(e) All laws and parts of laws in conflict herewith are repealed.

**History.** Acts 1943, No. 116, §§ 1-4;  
A.S.A. 1947, §§ 76-613 — 76-616.

**27-87-107. Record of cotton shipments.**

(a) It shall be unlawful for any ferry boat to transport cotton or cottonseed from the shores of the State of Arkansas on the Mississippi River across the river into another state unless the owner or operator of the ferry boat shall keep a record of the vehicle used in the transportation of the cotton or cottonseed.

(b) The record shall show:

(1) The date of the trip;

(2) The name and address of the driver of the vehicle, to be obtained from the driver;

(3) The make and kind of the automobile, truck, wagon, or other vehicle so used; and

(4) If an automobile or truck, the number and state appearing on the license plate of the vehicle.

(c) If cotton so transported is already baled, the record shall further show the marks of identification appearing on the baled cotton.

(d) The record shall be kept in a book to be provided by the owner or operator of the ferry boat for that purpose and shall be kept on the ferry boat for a period of six (6) months following the date of the transportation of the cotton or cottonseed, during which period the record shall be open and subject to the inspection of the public at all times.

(e) After the expiration of the period, the book containing the record shall be filed with the State Highway Commission, to be preserved by it as a permanent record.

(f) Any person, firm, or corporation which shall fail or refuse to comply with the provisions of this section shall be deemed guilty of a

misdeemeanor and upon conviction shall be fined in any sum not less than fifty dollars (\$50.00) nor more than two hundred dollars (\$200) for each and every separate offense.

**History.** Acts 1931, No. 162, §§ 1-3; Pope's Dig., §§ 3069, 3070, 3659; A.S.A. 1947, §§ 76-1728 — 76-1730.

**Cross References.** Transportation of cotton over toll bridges, § 27-86-301 et seq.

## SUBCHAPTER 2 — LICENSE AND PRIVILEGE TAX

### SECTION.

- 27-87-201. Taking toll without license — Penalty.  
 27-87-202. License — Navigable waterways generally.  
 27-87-203. License — Stream on county boundary.  
 27-87-204. Operation by advertisement.

### SECTION.

- 27-87-205. Tax — Assessment.  
 27-87-206. License — Issuance.  
 27-87-207. Tax — Failure to pay.  
 27-87-208. Tax — Sheriff's settlement.  
 27-87-209. Tax or charge — Stream on state boundary.

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**Effective Dates.** Acts 1843, § 11, p. 109: effective on passage.

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### 27-87-201. Taking toll without license — Penalty.

If any person shall keep any ferry over any navigable stream, for which he or she shall charge any person any money or any other valuable thing, without complying with the provisions of this chapter in relation to obtaining license, he or she shall forfeit and pay to every other person having a licensed ferry on the same stream or lake in the same county five dollars (\$5.00) for every person so ferried, and the same sum for every vehicle or other article so transported which may be the subject of a separate charge is to be sued for and recovered before any justice of the peace in the county by civil action founded on this statute, with the costs of prosecution.

**History.** Rev. Stat., ch. 62, § 19; C. & M. Dig., § 4720; Pope's Dig., § 5819; A.S.A. 1947, § 76-1725.

## CASE NOTES

### ANALYSIS

Accommodation Ferries.  
 Consideration.  
 Election of Remedies.  
 Failure to Issue License.

### Accommodation Ferries.

The penalty of this section is not incurred by a person who runs a free skiff as an inducement to persons to trade at his store, when there is no charge in money, or otherwise, for ferriage, and the persons



carried are not under agreement to buy anything from the store; in such a case, the ferrykeeper whose rights are infringed has a clear case for damages, but the penalty of this section is not incurred by running the free ferry. *Shinn v. Cotton*, 52 Ark. 90, 12 S.W. 157 (1889).

#### **Consideration.**

This section was violated where a non-licensed ferrykeeper transported persons in consideration of their assisting him in repairing his ferry. *Shemwell v. Finley*, 88 Ark. 330, 114 S.W. 705 (1908).

#### **Election of Remedies.**

Where owner of a legally licensed ferry brought an action against a person who

operated an unlicensed ferry to recover statutory penalties and for damages for the unlawful operation of the ferry, it was error for the trial court to require the owner to elect upon which of these bases of recovery he would proceed. *Crane v. Jackson*, 125 Ark. 396, 188 S.W. 1188 (1916).

#### **Failure to Issue License.**

Dereliction of county officials in failing to issue annual license, and to levy and collect the tax therefor, cannot exonerate the holder of a ferry franchise for failure to pay annual license fee, or tax, nor exempt him from the penalties of this section. *Munn v. Shults*, 130 Ark. 291, 197 S.W. 570 (1917).

### **27-87-202. License — Navigable waterways generally.**

(a) No person shall keep any ferry over or across any public navigable stream or lake so as to charge any compensation for crossing the stream or lake without first procuring a license from the county court of the county in which the ferry is situated.

(b) Any person wishing to establish a ferry across any navigable stream in this state shall apply to the county court of the county in which the ferry site may be.

(c) The county court shall grant a license to the applicant for the term of one (1) year from the date of the license upon the applicant's:

(1) Showing lawful possession of the land on which the ferry is sought to be established;

(2) Satisfying the court that the public convenience will be promoted thereby;

(3) Paying the tax levied by the county court for the privilege of the ferry; and

(4) Executing the bond required by this chapter.

**History.** Rev. Stat., ch. 62, §§ 4, 7, 12; C. & M. Dig., §§ 4696, 4699, 4704; Pope's Dig., §§ 5795, 5798, 5803; A.S.A. 1947, §§ 76-1704, 76-1707, 76-1718.

### **CASE NOTES**

#### **ANALYSIS**

Abatement of Unauthorized Operation.  
Complaints for Damages.  
Decision of County Courts.  
Ferry Franchises.  
Free Ferries.  
Levy of Tax.  
Liability of Owners.  
License Requirement.

Nature of Franchise.  
Right to Ferry Franchise.  
Turnpike Franchises.

#### **Abatement of Unauthorized Operation.**

To operate a ferry under a charter granted under general incorporation laws without authority from the county court is an usurpation that may be abated by quo

warranto. *Darnell v. State*, 48 Ark. 321, 3 S.W. 365 (1887).

### **Complaints for Damages.**

Complaint for damages to ferry franchise resulting from competition by toll bridge was insufficient where it showed the issuance of only one ferry license 20 years previously, which license was good for 12 months. *Hanger v. Little Rock J.R.R.*, 52 Ark. 61, 11 S.W. 965 (1889).

### **Decision of County Courts.**

Where the establishment of a ferry for the public convenience except where inhibited by statute is a question for the county court, the court's decision is absolutely binding upon everyone, unless appealed from. *Lindsay v. Lindley*, 20 Ark. 573 (1859); *Haynes v. Wells*, 26 Ark. 464 (1871); *Little Rock & F.S.R.R. v. McGehee*, 41 Ark. 202 (1883).

### **Ferry Franchises.**

A ferry franchise can only be obtained from the county court, and not by charter under the general incorporation laws. *Darnell v. State*, 48 Ark. 321, 3 S.W. 365 (1887).

### **Free Ferries.**

County court has power to establish free ferries, but not at or within prohibited distance of licensed ferry of another. In re *Howell*, 36 Ark. 466 (1880).

### **Levy of Tax.**

Whenever a license to operate a ferry is granted, it is the duty of the county court to levy an annual tax on such privilege, without giving notice to the licensee. *Independence County v. Duffey*, 95 Ark. 352, 129 S.W. 794 (1910).

### **Liability of Owners.**

Owners of a ferry leased to another, who operated it, were not liable for failure of

the lessee to comply with the provisions of this section. *Don G. Parker, Inc. v. Point Ferry, Inc.*, 249 Ark. 764, 461 S.W.2d 587 (1971).

### **License Requirement.**

All ferries operating upon or over public navigable streams are deemed public ferries, and no person can keep any ferry operating over or across any such stream or lake and charge compensation for the use thereof without procuring a license. *Bell v. Clegg*, 25 Ark. 26 (1867); *Finley v. Shemwell*, 94 Ark. 190, 126 S.W. 717 (1910); *Shults v. Munn*, 124 Ark. 415, 187 S.W. 316 (1916).

### **Nature of Franchise.**

A ferry franchise is the creature of sovereign power, and no one can exercise it without the consent of the state; when granted in terms exclusive, it cannot be violated, and if it is violated, a court of chancery may be resorted to successfully. *Murray v. Menefee*, 20 Ark. 561 (1859).

### **Right to Ferry Franchise.**

The right to a ferry franchise is limited by statute to the owner or party rightfully in possession of land on a stream, and the right to a ferry franchise cannot be sold and transferred, nor is it descendible, separate and apart from the real estate wherewith it was allowed. *Haynes v. Wells*, 26 Ark. 464 (1871).

### **Turnpike Franchises.**

Where a ferry is operated as an incident to a chartered turnpike to facilitate travel over it, the forfeiture of the turnpike franchise carries with it the right to maintain the ferry. *Darnell v. State*, 48 Ark. 321, 3 S.W. 365 (1887).

## **27-87-203. License — Stream on county boundary.**

If any navigable stream or lake shall form a portion of the boundary of any county, so that one bank is in one county and the other is in a different county at the place where it is proposed to erect a ferry, a license shall be had from the county court for the ferry on the counties' respective banks or shores.

**History.** Rev. Stat., ch. 62, § 5; C. & M. Dig., § 4697; Pope's Dig., § 5796; A.S.A. 1947, § 76-1705.

## CASE NOTES

## ANALYSIS

Approval of Franchises.  
Jurisdiction.  
Municipal Regulation.  
Res Judicata.

**Approval of Franchises.**

In order to obtain a license or franchise to operate a ferry across a river which is the boundary between two counties, the applicant must get permission from the county court in each county. *Caldwell v. Fitzhugh*, 175 Ark. 801, 300 S.W. 395 (1927).

**Jurisdiction.**

Where a river is the boundary between two counties, the granting of a ferry franchise is not wholly within the jurisdiction of either county. *Caldwell v. Fitzhugh*, 175 Ark. 801, 300 S.W. 395 (1927).

**Municipal Regulation.**

A city is authorized to regulate ferries, and when only one bank of a stream where landing is made is within the limits of the municipal corporation, it may regulate the ferry. *Arkadelphia Lumber Co. v. City of Arkadelphia*, 56 Ark. 370, 19 S.W. 1053 (1892).

**Res Judicata.**

Where a river is the boundary between two counties, and the county court of one of the counties decides against the granting of ferry privileges, the decision becomes res judicata and the petitioner's application for a ferry franchise cannot be heard by the county court of the county on the opposite side of the river. *Caldwell v. Fitzhugh*, 175 Ark. 801, 300 S.W. 395 (1927).

**27-87-204. Operation by advertisement.**

(a) Any person wishing to put into operation any public ferry when the county court is not in session may do so by putting up an advertisement at the ferry, stating that he or she intends to apply at the next county court for a license for the ferry, and he or she may charge and receive the usual rates of ferriage until the county court shall meet.

(b) The county court, in cases where ferries have been put in operation in vacation of the court, by advertisement shall grant to the person a license at the next term of such court on his or her applying for it and complying with the provisions of this chapter as in cases of other ferries, which shall relate back for one (1) year from the time of putting the ferry in operation by advertisement.

(c) Any person putting a ferry across any navigable stream in operation by advertisement who shall fail or neglect at the next term of the county court to apply for a license and in all respects to comply with the orders of the county court in respect thereto shall by notice served on him or her by order of the county court be required to appear at its next term and show cause, if any, why he or she should not be fined. If no sufficient legal reason is shown, he or she shall be fined by the court in any sum not exceeding thirty dollars (\$30.00). These proceedings shall be had without the necessity of formal pleadings.

**History.** Rev. Stat., ch. 62, §§ 13-15; C. §§ 5804-5806; A.S.A. 1947, §§ 76-1722 — & M. Dig., §§ 4705-4707; Pope's Dig., 76-1724.



**27-87-205. Tax — Assessment.**

(a) Before any ferry shall be established, the court shall determine what tax shall be paid by the applicant for the privilege of the ferry, which shall not be less than one dollar (\$1.00) nor more than one hundred dollars (\$100).

(b) It shall be the duty of the county courts to levy a tax on all ferry privileges in their respective counties whether application be made by any person for the same or not. However, no ferry at which the public county road does not cross shall be subject to the tax herein provided.

**History.** Rev. Stat., ch. 62, § 8; Acts 4708; Pope's Dig., §§ 5799, 5807; A.S.A. 1843, § 2, p. 109; C. & M. Dig., §§ 4700, 1947, §§ 76-1708, 76-1709.

**CASE NOTES****ANALYSIS**

Annual Tax Levy.  
Municipal License Fees.

**Annual Tax Levy.**

Whenever a license to operate a ferry is granted, it is the duty of the county court to levy an annual tax on such privilege, without giving notice to the licensee. In-

dependence County v. Duffey, 95 Ark. 352, 129 S.W. 794 (1910).

**Municipal License Fees.**

A license fee of \$25.00 for the privilege of keeping a ferry within the limits of a city is a reasonable regulation, and not a tax. Arkadelphia Lumber Co. v. City of Arkadelphia, 56 Ark. 370, 19 S.W. 1053 (1892).

**27-87-206. License — Issuance.**

It shall be the duty of the clerk of the county court, immediately after the assessment of any tax for ferry privileges by the court, to issue a license for the ferrykeeper to whom the privileges were granted and to deliver it to the sheriff and charge him or her with the amount thereof, in the same manner that he or she is required to be charged with other county revenue.

**History.** Acts 1843, § 3, p. 109; C. & M. Dig., § 4709; Pope's Dig., § 5808; A.S.A. 1947, § 76-1710.

**27-87-207. Tax — Failure to pay.**

(a) It shall be the duty of the sheriff to present the licenses named in § 27-87-206 to the proper ferryman within twenty (20) days after they are issued.

(b) If the amount is not paid, the sheriff shall retain the license.

(c) Twenty (20) days thereafter, if the amount is still unpaid, it shall be the duty of the sheriff to levy on and sell the property of the ferrykeeper to satisfy the amount of the ferry tax, in the same manner and under the same restrictions as lands and tenements, goods, and chattels are required to be levied on and sold under executions on judgments at law.

(d) If sufficient property of the ferrykeeper cannot be found to make the amount of his or her ferry tax, it shall be the duty of the sheriff to return a statement of the facts to the next term of the county court, whose duty it shall be to order a scire facias issued against the securities of the ferrykeeper, returnable to the next term of the court.

(e) If sufficient cause shall not be shown to the contrary, the court shall order judgment against his securities for the amount found due with all costs.

**History.** Acts 1843, §§ 4, 6, p. 109; C. & §§ 5809, 5810; A.S.A. 1947, §§ 76-1711, M. Dig., §§ 4710, 4711; Pope's Dig., 76-1712.

### 27-87-208. Tax — Sheriff's settlement.

The sheriff shall settle for the amount collected by him or her for ferry tax in the manner and at the time that he or she is required to settle for other revenue of the county.

**History.** Acts 1843, § 7, p. 109; C. & M. Dig., § 4712; Pope's Dig., § 5811; A.S.A. 1947, § 76-1713.

### 27-87-209. Tax or charge — Stream on state boundary.

When a navigable stream makes a part of the boundary line of this state, if any tax or charge shall be assessed or collected by any adjoining state for the privilege of a ferry landing on the shore or bank of another state from this state, then the same tax or duty shall be assessed and collected for like privilege of landing on the banks or shores of this state.

**History.** Rev. Stat., ch. 62, § 6; C. & M. Dig., § 4698; Pope's Dig., § 5797; A.S.A. 1947, § 76-1706.

## SUBCHAPTER 3 — BONDS

#### SECTION.

27-87-301. Requirement and terms.

27-87-302. Damages.

#### SECTION.

27-87-303. Liability of sureties.

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**Effective Dates.** Acts 1873, No. 31, § 30; effective on passage.

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### 27-87-301. Requirement and terms.

The county court shall have authority and is required to compel all persons who are authorized to keep a public ferry to give bond and good security in such sum as the court may deem sufficient to the judge of the county court and his or her successors in office. This bond shall be

conditioned that the ferrykeeper will constantly find, provide, and keep good and sufficient boats or other proper craft in constant good repair and the banks on either side of the creek or watercourse that may be ferried in good condition and that the ferry shall always be so attended as to pass all persons and their horses and other stock, vehicles, and effects in safety and without detention and that he or she will comply with all the requisitions of the law relating to or governing public ferries.

**History.** Rev. Stat., ch. 62, § 11; Acts Dig., § 4703; Pope's Dig., § 5802; A.S.A. 1873, No. 31, § 19 (in part), p. 53; C. & M. 1947, § 76-1715.

### CASE NOTES

#### ANALYSIS

Applicability.  
Liability of Owners.

#### Applicability.

This section does not apply to a ferrykeeper's obligations to the public generally and, being a reenactment of the common law, creates an additional remedy,

but not an additional right. *Harris v. McClintock*, 164 Ark. 145, 261 S.W. 29 (1924).

#### Liability of Owners.

Owners of a ferry leased to another, who operated it, were not liable for failure of the lessee to comply with the provisions of this section. *Don G. Parker, Inc. v. Point Ferry, Inc.*, 249 Ark. 764, 461 S.W.2d 587 (1971).

### 27-87-302. Damages.

If any persons sustaining damage by reason of a ferrykeeper not having complied with the conditions of bond, the persons sustaining the damage may bring suit against the ferrykeeper on the bond in the name of the judge of the county court and recover for such nonperformance of the conditions so much damage as they shall appear to have sustained and take out execution for whatever shall be recovered.

**History.** Acts 1873, No. 31, § 19 (in part), p. 53; C. & M. Dig., § 4714; Pope's Dig., § 5813; A.S.A. 1947, § 76-1716.

### CASE NOTES

#### ANALYSIS

Actions for Negligence.  
Liability as Insurer.

#### Actions for Negligence.

The right of action provided by this section on the bond of a ferrykeeper does not preclude a resort to the common law action for negligence. *Wells v. Steele*, 31 Ark. 219 (1876).

#### Liability as Insurer.

Ferrykeepers, like all other common carriers, are regarded in law as insurers of the property committed to their care and are responsible for all losses or damages to it which do not come within the excepted cases of the acts of God and the public enemy. *Harvey v. Rose*, 26 Ark. 3 (1870); *Evans & Shinn v. Rudy*, 34 Ark. 383 (1879).



**27-87-303. Liability of sureties.**

In all cases of recoveries against ferrykeepers for violations of this chapter, if after judgment execution shall be returned that there are no goods and chattels of the ferrykeeper whereupon to levy and make the money demanded in the execution, the justice shall issue a scire facias against the sureties of the ferrykeeper. If the securities do not show sufficient reason to the contrary, the justices shall enter judgment against the securities for the amount of debt as may be unsatisfied and issue execution therefor as in other cases.

**History.** Rev. Stat., ch. 62, § 20; C. & M. Dig., § 4719; Pope's Dig., § 5818; A.S.A. 1947, § 76-1717.

**SUBCHAPTER 4 — RATES**

## SECTION.

27-87-401. Regulation — Fines.

27-87-402. Record — Distribution.

## SECTION.

27-87-403. Ferries in competition with state-owned toll bridges.

**Effective Dates.** Acts 1873, No. 31, § 30: effective on passage.

Acts 1933, No. 139, § 2: approved Mar. 24, 1933. Emergency clause provided: "It is ascertained that ferries are being oper-

ated in competition with State owned toll bridges at rates that result in great loss to the State and for this reason an emergency is hereby declared and this act shall take effect without delay."

**27-87-401. Regulation — Fines.**

(a) The toll of ferries that are established shall at all times be subject to regulation by the county court in which the ferry may be kept.

(b) Every keeper of a ferry shall keep constantly posted in some conspicuous place at the ferry the rates of toll allowed to be charged. If any ferrykeeper fails or neglects to do so, he or she shall forfeit and pay the sum of four dollars (\$4.00) for every neglect. Each day that the ferry rates are not posted shall constitute a separate offense. The sum shall be recovered in a civil action before any justice of the county, one-half (½) for the use of the prosecutor and one-half (½) to the county.

(c) Should any keeper presume to charge or demand more than what the county court may have allowed, the keeper shall forfeit and pay for every offense the sum of ten dollars (\$10.00), to be recovered before any justice of the peace of the township in which such ferry is located by any person of whom the demand may be made.

**History.** Rev. Stat., ch. 62, § 18; Acts 1873, No. 31, § 20, p. 53; C. & M. Dig., §§ 4701, 4717, 4718; Pope's Dig., §§ 5800, 5816, 5817; A.S.A. 1947, §§ 76-1720, 76-1721.

## CASE NOTES

## ANALYSIS

Charge for Contents.  
 Charge for Passengers.  
 Failure to Receive Rates.  
 Reasonableness of Rates.

**Charge for Contents.**

A ferrykeeper cannot charge for the contents of a wagon separately from the wagon itself. *Kelly v. Altemus*, 34 Ark. 184 (1879).

**Charge for Passengers.**

Where a county court fixes the rate for a vehicle depending upon its size or capacity and not upon the number of passengers in

the vehicle, a ferrykeeper cannot charge extra ferriage for passengers riding in the vehicle. *Newport Ferry Co. v. Stephens*, 137 Ark. 544, 209 S.W. 726 (1919).

**Failure to Receive Rates.**

A ferrykeeper is not liable for the penalty if the clerk fails to give him a copy of the ferriage rates fixed by the county court. *State ex rel. Pub. Sch. Fund v. Arkadelphia Lumber Co.*, 70 Ark. 329, 67 S.W. 1011 (1902).

**Reasonableness of Rates.**

The reasonableness of ferry rates is a question for the county court. *Covington v. St. Francis County*, 77 Ark. 258, 91 S.W. 186 (1905).

**27-87-402. Record — Distribution.**

(a) The court shall state on its record the rates of toll or ferriage which may be demanded for ferrying passengers, vehicles, beasts, and other property usually transported by ferries.

(b) The clerk shall make out a copy of ferriage rates under his or her official signature and give it to the person procuring a license.

**History.** Rev. Stat., ch. 62, § 9; C. & M. Dig., § 4702; Pope's Dig., § 5801; A.S.A. 1947, § 76-1719.

## CASE NOTES

## ANALYSIS

Purpose.  
 Reasonableness of Rate.

**Purpose.**

Ferry rates are fixed for the protection of the public. *Kelly v. Altemus*, 34 Ark. 184 (1879).

**Reasonableness of Rate.**

Reasonableness of ferry rates is a question solely for the county courts. *Covington v. St. Francis County*, 77 Ark. 258, 91 S.W. 186 (1905).

**27-87-403. Ferries in competition with state-owned toll bridges.**

(a) All ferries operating in competition with state-owned toll bridges shall be subject to regulation as to ferry rates by the State Highway Commission and the rates to be charged shall be the same as the traffic rates prevailing upon the state-owned toll bridge with which the ferry is operated in competition.

(b) Any ferrykeeper operating and a competing ferrykeeper charging less than the rate fixed on state-owned toll bridges shall be deemed guilty of a misdemeanor and punished by a fine not to exceed fifty dollars (\$50.00) for each separate offense. However, the commission, in

its discretion, may fix a lower rate on those ferries for all vehicles other than motor-propelled vehicles and riparian landowners or tenants on the lands for passing from one part of a farm to another owned or leased by the landowner or tenant.

(c) No ferry shall be declared to be in competition with the state-owned toll bridge unless it is within three (3) miles of a state-owned toll bridge.

**History.** Acts 1933, No. 139, § 1; Pope's Dig., § 5822; A.S.A. 1947, § 76-1727.

## CHAPTER 88

### BONDS FOR CONSTRUCTION AND OPERATION

#### SECTION.

- 27-88-101. Liberal construction.
- 27-88-102. Definitions.
- 27-88-103. Scope of authority.
- 27-88-104. Authority to issue bonds —  
Use of funds.
- 27-88-105. Form of bonds.
- 27-88-106. Redemption before maturity.
- 27-88-107. Seal.
- 27-88-108. Sale.
- 27-88-109. No right arises until issuance  
and sale.
- 27-88-110. Investment of proceeds from  
sale.
- 27-88-111. Temporary notes or bonds.
- 27-88-112. Notes and bonds as negotiable  
instruments.

#### SECTION.

- 27-88-113. Tax exemption.
- 27-88-114. Sinking fund for payment of  
bonds.
- 27-88-115. Operation and maintenance  
fund.
- 27-88-116. Tolls, rates, and fees.
- 27-88-117. Bonds payable solely from  
bridge or ferry revenues.
- 27-88-118. Additional bond issues —  
Equality.
- 27-88-119. Contracts with United States  
or other states.
- 27-88-120. Conformity to federal law.
- 27-88-121. Right of eminent domain.

**Effective Dates.** Acts 1953, No. 104, § 19: Feb. 20, 1953. Emergency clause provided: "There has been found, and it is hereby determined by the General Assembly, that there is a lack of adequate bridge and ferry facilities in the system of State Highways in the State of Arkansas; that on account of that lack of adequate facilities, vehicular and other traffic are denied an easy and direct access to and across the State of Arkansas; that on account thereof much vehicular and other traffic avoid passage into and through the State of Arkansas, thereby causing to the State of Arkansas a loss of revenues derived from such traffic and causing to the inhabitants of the State of Arkansas loss of revenues and income necessarily incidental thereto; that on account of the said lack of adequate facilities, the highways currently in use are over crowded with traffic,

thereby making it impossible to provide adequate maintenance to the said highways and endangering unnecessarily the lives of those using said highways; that until the lack of adequate bridge and ferry facilities has been supplied, it will be impossible for the State of Arkansas to develop and maintain a system of state highways adequate for the growth and development of the State; that when the said facilities are supplied, new business and industry will be more greatly encouraged to locate in the State; that only by this Act can the urgent demands for adequate bridge and ferry facilities be met and for that reason it should take effect without delay; and for said reasons it is hereby declared necessary for the preservation of the public peace, health and safety that this Act should become effective without delay. An emergency, there-



fore, is declared to exist and this Act shall take effect and be in force from and after its passage, and approval by the Governor.”

Acts 1957, No. 15, § 4: Feb. 1, 1957. Emergency clause provided: “There has been found, and it is hereby determined by the General Assembly, that there is a lack of adequate bridge and ferry facilities in the system of State Highways in the State of Arkansas; that on account of the lack of adequate facilities, vehicular and other traffic are denied an easy and direct access to and across the State of Arkansas; that on account thereof much vehicular and other traffic avoid passage into and through the State of Arkansas, thereby causing to the State of Arkansas a loss of revenue derived from such traffic and causing to the inhabitants of the State of Arkansas loss of revenues and income necessarily incidental thereto; that on account of the said lack of adequate facilities, the highways currently in use are over-crowded with traffic, thereby making

it impossible to provide adequate maintenance to the said highways and endangering unnecessarily the lives of those using said highways; that until the lack of adequate bridge and ferry facilities has been supplied, it will be impossible for the State of Arkansas to develop and maintain a system of state highways adequate for the growth and development of the State; that when the said facilities are supplied, new business and industry will be more greatly encouraged to locate in the State; that only by this act can the urgent demands for adequate bridge and ferry facilities be met and for that reason it should take effect without delay; and for said reasons it is hereby declared necessary for the preservation of the public peace, health and safety that this act should become effective without delay. An emergency, therefore, is declared to exist and this act shall take effect and be in force from and after its passage, and approval by the Governor.”

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### 27-88-101. Liberal construction.

This chapter shall be liberally construed to effectuate the purposes thereof.

**History.** Acts 1953, No. 104, § 17; A.S.A. 1947, § 76-633.

### 27-88-102. Definitions.

As used in this chapter, unless the context otherwise requires:

(1) “Commission” means the State Highway Commission of the State of Arkansas;

(2) “Construction” and “constructing” when said with reference to ferries include the terms “purchase” and “purchasing”, respectively;

(3) “General Bridge Authority Act” has reference to 33 U.S.C. § 525 et seq.; and

(4) “Revenue” means revenue or income derived solely from tolls, rents, fees, and other charges imposed by the commission for services rendered by a bridge constructed or reconstructed, or by a ferry constructed under the provisions of this chapter, and shall not be deemed in any event to include any revenues or funds of the State of Arkansas.

**History.** Acts 1953, No. 104, § 1; A.S.A. 1947, § 76-617.

**27-88-103. Scope of authority.**

(a) This chapter shall be deemed, without reference to any other statute, full authority for:

- (1) The construction or reconstruction of any bridge or ferry;
- (2) The acquisition, construction, and reconstruction of approaches thereto;
- (3) The operation and maintenance thereof; and
- (4) The issuance and sale of the bonds authorized by this chapter.

(b) This chapter shall be construed as an additional and alternative method for the aforementioned activities and for the financing thereof.

(c) No petition or election or other or further proceeding in respect to construction, reconstruction, and acquisition or to the issuance or sale of bonds under this chapter and no publication of any resolution, notice, or proceeding relating to the construction, reconstruction, or acquisition or sale of the bonds shall be required except such as are prescribed by this chapter, any provision of other statutes of the state to the contrary notwithstanding.

**History.** Acts 1953, No. 104, § 13;  
A.S.A. 1947, § 76-629.

**27-88-104. Authority to issue bonds — Use of funds.**

(a) Whenever the State Highway Commission shall determine on the basis of a traffic and engineering survey that the public convenience and necessity require the construction or reconstruction of a bridge or the construction of a ferry to facilitate interstate or intrastate traffic and the construction or reconstruction of the bridge or the construction of the ferry will entail expense in an amount found by the commission to hinder and retard highway construction within the state, the commission is authorized to issue bonds to be known as "State Highway ..... River Bridge (Ferry) Revenue Construction Bonds".

(b) The proceeds from the sale of revenue construction bonds shall be paid into the State Treasury to the credit of the State Highway Bridge Revenue Construction Fund, which fund is created, to the credit of the State Highway .....River Bridge (Ferry), and shall be used, in addition to any other available funds, for paying the cost of construction and reconstruction of any bridge and the acquisition, construction, and reconstruction of approaches thereto or for paying the costs of constructing any ferry and the acquisition and construction of approaches to the ferry, except that the accrued interest paid when the bonds are delivered shall be credited to the sinking fund provided by the commission for the payment of the principal of and interest on the bonds and the fiscal agency charges in connection therewith.

(c) Costs of construction and reconstruction and acquisition of approaches shall be deemed to include:

- (1) Costs of construction, reconstruction, and acquisition;
- (2) Costs of all property, rights, easements, and franchises deemed necessary or convenient therefor;

(3) Interest upon the bonds prior to and during the construction, reconstruction, or acquisition and for twelve (12) months after completion thereof;

(4) Engineering and legal expenses;

(5) Expenses for estimates of costs and revenues;

(6) Expenses for plans, specifications, and surveys;

(7) Other expenses necessary or incidental to determining the feasibility or practicability of the construction, reconstruction, or acquisition, and administrative expenses; and

(8) Other expenses as may be necessary or incidental to the financing herein authorized.

**History.** Acts 1953, No. 104, § 2; A.S.A. 1947, § 76-618.

### **27-88-105. Form of bonds.**

(a) The bonds shall be in such form and denomination, have such dates and maturities not exceeding forty (40) years from their date, bear interest payable at such times and rates, be payable at such places within or without the state, and contain such provisions as to registration of ownership if the commission thinks registration is desirable, all as the State Highway Commission shall determine.

(b) The bonds shall be signed with the facsimile or lithographed signature of the Chair of the State Highway Commission and with the manual signature of the secretary of the commission.

(c) The coupons attached thereto shall be signed with the facsimile or lithographed signature of the chair of the commission.

(d) The delivery of the bonds so executed shall be valid, notwithstanding any change in the officers occurring after their execution.

**History.** Acts 1953, No. 104, § 3; 1957, No. 15, § 1; A.S.A. 1947, § 76-619.

### **27-88-106. Redemption before maturity.**

All bonds issued under the provisions of this chapter, maturing on and after ten (10) years from their date, in the discretion of the State Highway Commission, may contain a provision authorizing their redemption before maturity at the option of the commission in a manner as it may elect at par plus accrued interest upon notice published for one (1) insertion not more than sixty (60) days and not later than thirty (30) days before the date of such redemption in a newspaper of general circulation published in Little Rock and in a financial journal published in the Borough of Manhattan, New York, New York.

**History.** Acts 1953, No. 104, § 4; A.S.A. 1947, § 76-620.



**27-88-107. Seal.**

The State Highway Commission is authorized to adopt and use a seal in the execution and issuance of bonds authorized under the provisions of this chapter.

**History.** Acts 1953, No. 104, § 3; 1957, No. 15, § 1; A.S.A. 1947, § 76-619.

**27-88-108. Sale.**

(a) The State Highway Commission is authorized to sell all the bonds of each issue issuable under this chapter at one (1) time, or it may from time to time sell installments of the bonds of each issue in principal amounts to be determined by the commission. The bonds of each issue may be delivered all at one (1) time or from time to time.

(b) All bond sales shall be public on sealed bids, after notice published by the commission's secretary for one (1) insertion not more than thirty (30) days nor less than fifteen (15) days before the date of the sale, in the news media specified in § 27-88-106. This requirement shall not apply to a sale of bonds made to an agent or instrumentality of the United States Government, including corporations, the capital stock of which is subscribed by the United States Government.

(c) Bonds may be sold at less than par, and the bonds of each issue, as sold, may be converted into an issue of bonds bearing a lower rate or rates of interest, but only on the condition that the commission receive no less and pay no more than it would have received and paid if the bonds had not been converted and on the condition that the conversion is approved by the commission.

(d) In no event, however, shall the commission be required to pay more than six percent (6%) interest on the amount received for bonds sold under the provisions of this chapter, computed with relation to the absolute maturity of the bonds in accordance with standard tables of bond values.

(e) The commission shall have the right to refuse any and all bids.

(f) The commission may employ one (1) or more fiscal agents for the sale of the bonds and pay a reasonable fee for the services of the agent or agents.

**History.** Acts 1953, No. 104, §§ 5, 6; 1957, No. 15, §§ 2, 3; A.S.A. 1947, §§ 76-621, 76-622.

**27-88-109. No right arises until issuance and sale.**

This chapter shall not create any right of any character, and no right of any character shall arise under or pursuant to it unless and until the bonds authorized by this chapter have been issued and actually sold by the State Highway Commission.

**History.** Acts 1953, No. 104, § 15;  
A.S.A. 1947, § 76-631.

### **27-88-110. Investment of proceeds from sale.**

The State Highway Commission is further authorized to invest portions of the proceeds from the sale of such bonds as in its judgment may not be required for immediate use in direct general obligations of the United States or of the State of Arkansas.

**History.** Acts 1953, No. 104, § 5; 1957,  
No. 15, § 2; A.S.A. 1947, § 76-621.

### **27-88-111. Temporary notes or bonds.**

Temporary notes or bonds conforming to this chapter, exchangeable for definitive bonds, may be issued in the discretion of the State Highway Commission.

**History.** Acts 1953, No. 104, § 3; 1957,  
No. 15, § 1; A.S.A. 1947, § 76-619.

### **27-88-112. Notes and bonds as negotiable instruments.**

All bonds and notes issued under the provisions of this chapter shall be, and shall have, all the qualities and incidents of negotiable instruments under the negotiable instruments law of this state.

**History.** Acts 1953, No. 104, § 3; 1957,  
No. 15, § 1; A.S.A. 1947, § 76-619.

### **27-88-113. Tax exemption.**

The bonds issued under this chapter shall be exempt from the state income taxes.

**History.** Acts 1953, No. 104, § 6; 1957,  
No. 15, § 3; A.S.A. 1947, § 76-622.

### **27-88-114. Sinking fund for payment of bonds.**

At or before the issuance of any bonds, the State Highway Commission shall:

(1) By resolution provide for a sinking fund for the payment of the principal of the bonds and the interest thereon and for the payment of the charges of banks or trust companies for making payment of the principal and interest; and

(2) Set aside and pledge a sufficient amount of the gross revenues of the bridge or ferry to be paid by the commission into the sinking fund at intervals to be determined by the resolution of the commission prior to the issuance of the bonds for:

(A) The interest upon such bonds as the interest shall fall due;

(B) The necessary fiscal agency charges for paying principal and interest;

(C) The payment of the bonds as they fall due, or if all bonds mature at one (1) time, the proper maintenance of a sinking fund sufficient for the payment thereof at that time; and

(D) A margin for safety.

**History.** Acts 1953, No. 104, § 7; A.S.A. 1947, § 76-623.

### **27-88-115. Operation and maintenance fund.**

(a) All revenues of the bridge or ferry not required under the provisions of this chapter to be paid into the sinking fund provided in the resolution authorizing the issuance of bonds shall be paid into an operation and maintenance fund and be used by the State Highway Commission in the operation and maintenance of the bridge or ferry.

(b) However, all moneys in any operation and maintenance fund in excess of an amount deemed by the commission sufficient for operation and maintenance for an ensuing period of not less than twelve (12) months shall be paid into the sinking fund.

**History.** Acts 1953, No. 104, § 8; A.S.A. 1947, § 76-624.

### **27-88-116. Tolls, rates, and fees.**

(a) The State Highway Commission is authorized, and it shall be its duty, by resolution to establish, maintain, and collect just and equitable tolls, rates, fees, and other charges for the use of and the services rendered by the bridge or ferry.

(b) The commission may change and readjust the tolls, rates, fees, and other charges from time to time to such extent as will not render insecure the rights of the holders of revenue bonds or violate any sinking fund agreement or other lawful agreements with bondholders.

(c) Tolls, rates, fees, and other charges shall be sufficient in each year for the payment of the sums herein required to be paid into the sinking fund and for the payment of the proper and reasonable expenses of operation and maintenance of the bridge or ferry and of the approaches thereto.

(d) Revenues collected pursuant to this section shall be deemed the revenues of the bridge or ferry.

(e) The aggregate of tolls, rents, fees, and other charges shall always be sufficient for sinking fund payments, and for expenses of operation and maintenance.

(f) If there is default in the payment of the principal of or interest upon any of the bonds issued under the provisions of this chapter, any court having jurisdiction in any proper action may appoint a receiver to operate and manage the bridge or ferry on behalf of the commission, with power to charge and collect tolls, rents, fees, and other charges



sufficient to provide for the payment of the bonds and interest thereon, and for the payment of the operating expenses and to apply the income and the revenues in conformity with this chapter and the resolution providing for the issuance of the bonds.

**History.** Acts 1953, No. 104, § 9; A.S.A. 1947, § 76-625.

### **27-88-117. Bonds payable solely from bridge or ferry revenues.**

(a) Bonds issued under the provisions of this chapter shall be payable solely from the revenues derived from the bridge or ferry. These bonds shall not in any event constitute an indebtedness of the State of Arkansas within the meaning of the constitutional provisions or limitations.

(b) It shall be plainly stated on the face of each bond that the bond has been issued under the provisions of this chapter and that it does not constitute an indebtedness of the State of Arkansas within any constitutional or statutory limitation.

**History.** Acts 1953, No. 104, § 10; A.S.A. 1947, § 76-626.

### **27-88-118. Additional bond issues — Equality.**

(a) The State Highway Commission may provide in its resolution authorizing the issuance of the bonds or in the trust indenture executed in connection therewith that additional bonds may thereafter be authorized and issued, at one (1) time or from time to time, when necessary for the completion of the construction or reconstruction of any bridge and the acquisition, construction, and reconstruction of approaches thereto, or for the completion of the construction of any ferry and the acquisition and construction of approaches thereto.

(b) Additional bonds will be secured and be payable from the revenues of the bridge or ferry equally with all other bonds issued pursuant to the resolution, without preference or distinction between any one bond and any other bond by reason of priority of issuance or otherwise.

**History.** Acts 1953, No. 104, § 11; A.S.A. 1947, § 76-627.

### **27-88-119. Contracts with United States or other states.**

For the purpose of carrying into effect the objects and purposes of this chapter, the State Highway Commission shall have full power and authority to negotiate and enter into contracts with the United States and any of its agencies and with the state highway commission or other comparable authority of any adjoining state where a bridge or ferry, or the approaches thereto may be located and to contract for the joint ownership of any bridge or ferry and the approaches thereto and the

means and manner of operating and maintaining the bridge or ferry and the approaches thereto.

**History.** Acts 1953, No. 104, § 14;  
A.S.A. 1947, § 76-630.

**27-88-120. Conformity to federal law.**

All interstate bridges constructed or reconstructed under the terms of this chapter and all tolls, rents, fees, and other charges established for services rendered by the bridge or ferry shall be subject and conform to the terms and provisions of the Act of Congress known as the “General Bridge Authority Act”, approved August 2, 1946, and any act amendatory thereto.

**History.** Acts 1953, No. 104, § 16; reference to the General Bridge Act of 1946, which is codified as 33 U.S.C. § 525 et seq.

**U.S. Code.** The reference to the General Bridge Authority Act is probably a

**27-88-121. Right of eminent domain.**

For the purpose of acquiring any land, rights, easements, franchises, or other real or personal property deemed to be necessary or convenient for the construction and reconstruction of any bridge or ferry, or for the acquisition of the approaches thereto, the State Highway Commission shall have the right of eminent domain, as is provided in Acts 1927, No. 116, § 5 [repealed] and Acts 1933, No. 115, § 1 [repealed] and in §§ 27-64-104 and 27-67-316.

**History.** Acts 1953, No. 104, § 12; demnation, and disposition of property, A.S.A. 1947, § 76-628. § 27-67-301 et seq.

**Cross References.** Acquisition, con-

**CHAPTER 89**  
**INTERSTATE COMPACTS**

SUBCHAPTER.

- 1. GENERAL PROVISIONS. [RESERVED.]
- 2. ARKANSAS-MISSISSIPPI BRIDGE COMMISSION COMPACT.
- 3. ARKANSAS-MISSISSIPPI GREAT RIVER BRIDGE CONSTRUCTION COMPACT.

**SUBCHAPTER 1 — GENERAL PROVISIONS**  
[Reserved]

**SUBCHAPTER 2 — ARKANSAS-MISSISSIPPI BRIDGE COMMISSION COMPACT**

SECTION.

- 27-89-201. Creation of commission — Members.
- 27-89-202. Text of compact.

SECTION.

- 27-89-203. Compact binding when signed — Filing.
- 27-89-204. Consent of Congress — Effect.

**Effective Dates.** Acts 1951, No. 66, § 5; Feb. 9, 1951. Emergency clause provided: "Since the demands of transportation are such that the facilities to be obtained through this act are of immediate need, an emergency exists within the

meaning of the Constitution, this act being necessary for the immediate preservation of the public health, peace and safety, and this act shall, therefore, be in full force and effect from and after its passage and approval by the Governor."

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### **27-89-201. Creation of commission — Members.**

(a) The Governor, by and with the advice and consent of the Senate, shall appoint three (3) commissioners to enter into a compact on behalf of the State of Arkansas with the State of Mississippi.

(b) If the Senate is not in session at the time for making these appointments, the Governor shall make temporary appointments, as in the case of a vacancy.

(c) Any two (2) of the commissioners so appointed, together with the Attorney General of the State of Arkansas, may act to enter into the compact set out in § 27-89-202.

(d) Vacancies occurring in the office of any appointed commissioner shall be filled by appointment by the Governor by and with the advice and consent of the Senate for the unexpired term.

**History.** Acts 1951, No. 66, §§ 1, 3; A.S.A. 1947, §§ 76-2101, 76-2103.

### **27-89-202. Text of compact.**

#### **COMPACT BETWEEN ARKANSAS AND MISSISSIPPI CREATING AN ARKANSAS-MISSISSIPPI BRIDGE COMMISSION**

##### **ARTICLE I**

There is created an Arkansas-Mississippi Bridge Commission (hereinafter referred to as the commission) which shall be a body corporate and politic and which shall have the following powers and duties:

1. To plan, construct, maintain, and operate a bridge and approaches thereto across the Mississippi River at or near Helena, Arkansas, and Friars Point, Mississippi, at a point deemed by the commission as most suitable to the interests of the citizens of the States of Arkansas and Mississippi in accordance with the provisions of an act of the Seventy-Ninth Congress, Second Session, of the United States entitled "The General Bridge Act of 1946";

2. To purchase, maintain and, in its discretion, to operate all or any ferries across the Mississippi River within twenty-five (25) miles of the site selected for the bridge;

3. To contract, to sue, and be sued in its own name; to purchase or otherwise acquire, hold, and dispose of real and personal property;



4. To acquire by proper condemnation proceedings such real property as may be necessary for the construction and operation of the bridge and the approaches thereto;

5. To issue bonds on the security of the revenues derived from the operation of the bridge and ferries for the payment of the cost of the bridge, its approaches, ferry or ferries, and the necessary lands, easements, and appurtenances thereto including interest during construction and all necessary engineering, legal, architectural, traffic surveying, and other necessary expenses. Such bonds shall be the negotiable bonds of the commission, the income of which shall be tax free. The principal and interest of the bonds, and any premiums to be paid for their retirement before maturity, shall be paid solely from the revenues derived from the bridge and ferries;

6. To establish and charge tolls for transit over such bridge and ferries in accordance with the provisions of this compact;

7. To perform all other necessary and incidental functions.

## ARTICLE II

The rates of tolls to be charged for transit over such bridge and ferries shall be so adjusted as to provide a fund sufficient to pay for the reasonable cost of maintenance, repairs, and operation (including the approaches to the bridge) under economical management, and also to provide a sinking fund sufficient to pay the principal and interest of the outstanding bonds. All tolls and other revenues derived from facilities of the commission are pledged to such uses.

## ARTICLE III

The commission shall keep an accurate record of the cost of the bridge and other expenses and of the daily revenues collected and shall report annually to the governor of each state setting forth in detail the operations and transactions conducted by it pursuant to this agreement and any legislation thereunder.

## ARTICLE IV

When the bonds have been retired, the part of the bridge within the State of Arkansas shall be conveyed to the State of Arkansas, and that part within the State of Mississippi to the State of Mississippi, and the high contracting parties to this compact do hereby agree that thereafter the bridge shall be free of tolls and shall be properly maintained, operated and repaired by the two states as may be agreed upon.

## ARTICLE V

The commission shall consist of eighteen (18) members, nine (9) of whom shall be qualified electors of the State of Arkansas and nine (9) of whom shall be qualified electors of the State of Mississippi. The Arkansas members are to be chosen by the State of Arkansas, and the

Mississippi members are to be chosen by the State of Mississippi, in the manner and for the term fixed by the legislature of each state, except as herein provided. The first commission, acting under this compact, shall be the present members of the Arkansas-Mississippi Bridge Commission heretofore appointed under the terms and provisions of Act of Congress approved May 17, 1939 (Public Act 80, 76th Congress), as amended by Act of Congress approved June 19, 1948 (Public Act 701, 80th Congress), said commission consisting of the following members: J. B. Lambert, Helena, Arkansas; R. L. Brooks, Helena, Arkansas; K. B. Laswell, Helena, Arkansas; John C. Sheffield, Helena, Arkansas; C. N. Houck, Marianna, Arkansas; William Campbell, Forrest City, Arkansas; Clarence Thomas, Clarendon, Arkansas; Ballard Deane, St. Charles, Arkansas; DeWitt Poe, McGehee, Arkansas; W. K. Anderson, Clarksville, Mississippi; E. Cage Brewer, Clarksdale, Mississippi; M. D. Brett, Clarksdale, Mississippi; R. N. Baltzer, Clarksdale, Mississippi; Sol Hirsburg, Friars Point, Mississippi; John Dunlap, Batesville, Mississippi; Noel M. Hodge, Oxford, Mississippi; Grady Cook, Pontotoc, Mississippi; James A. Finely, Tupelo, Mississippi.

#### ARTICLE VI

1. The Commission shall elect from its number a chairman and a vice chairman and may appoint such officers and employees as it may require for the performance of its duties and shall fix and determine their qualifications and duties.

2. Until otherwise determined by the legislature of the two states, no action of the commission shall be binding unless taken at a meeting at which at least five (5) members from each state are present and unless a majority of the members from each state present at such meeting shall vote in favor thereof. Each state reserves the right hereafter to provide by law for the exercise of the veto power by the governor thereof over any action of any commission appointed therefrom.

3. The two states shall provide penalties for violations of any order, rule or regulation of the commission, and for the manner of enforcing same.

#### ARTICLE VII

The commission is authorized and directed to proceed with the planning and construction of the bridge and the approaches thereto as rapidly as may be economically practicable and is vested with all necessary and appropriate powers, not inconsistent with the constitution or the laws of the United States or of either state, to effect the same, except the power to assess or levy taxes.

ARTICLE VIII

In witness thereof, we have hereunto set our hands and seals under authority vested in us by law.

(Signed)

In the presence of:  
(Signed)

**History.** Acts 1951, No. 66, § 1; A.S.A. 1947, § 76-2101; Acts 1995, No. 1296, § 99.

**Publisher's Notes.** This compact was signed by Ike Murry, Attorney General of Arkansas; J. R. Bush, John R. Anderson, and Chester Parrish, Commissioners of

Arkansas; J. P. Coleman, Attorney General of Mississippi; and W. C. Kirkpatrick, J. E. Merritt, and W. S. Kincade, Commissioners of Mississippi.

**U.S. Code.** The General Bridge Act, referred to in this compact, is codified as 33 U.S.C. § 525 et seq.

27-89-203. Compact binding when signed — Filing.

The compact when signed by the signatories of each state as herein provided shall become binding upon the State of Arkansas and shall be filed in the office of the Secretary of State of Arkansas.

**History.** Acts 1951, No. 66, § 2; A.S.A. 1947, § 76-2102.

27-89-204. Consent of Congress — Effect.

The commission shall have power to apply to the Congress of the United States for its consent and approval of the compact; in the absence of consent of Congress and until the compact shall have been secured, the compact shall be binding upon the State of Arkansas in all respects permitted by law for the two (2) states of Arkansas and Mississippi without the consent of Congress to cooperate, for the purposes enumerated in the compact and in the manner provided therein.

**History.** Acts 1951, No. 66, § 4; A.S.A. 1947, § 76-2104.

SUBCHAPTER 3 — ARKANSAS-MISSISSIPPI GREAT RIVER BRIDGE  
CONSTRUCTION COMPACT

SECTION.

- 27-89-301. Text of compact.
- 27-89-302. State highway commissioners to serve on compact authority — Filling of vacancies.
- 27-89-303. Powers granted to members of authority — Directions for other state officers.

SECTION.

- 27-89-304. Compact operative when executed and ratified.
- 27-89-305. Use of state funds — Appropriation necessary for construction funds.
- 27-89-306. Application to Congress for consent and approval — Binding effect of compact.



**27-89-301. Text of compact.**

The Chairman of the State Highway Commission of the State of Arkansas, acting on behalf of this state, is authorized to execute a compact, to be known as the "Arkansas-Mississippi Great River Bridge Construction Compact," in substantially the following form, with the State of Mississippi, and the General Assembly signifies in advance its approval and ratification of such compact, to wit:

**ARKANSAS-MISSISSIPPI GREAT RIVER BRIDGE  
CONSTRUCTION COMPACT**

**ARTICLE I**

The purpose of this Compact is to promote the construction of a highway bridge or a combined highway-railroad bridge connecting the States of Mississippi and Arkansas at or near Rosedale, Mississippi; and McGehee and Dumas, Arkansas, and to establish a joint interstate authority to assist in these efforts.

**ARTICLE II**

This Compact shall become effective immediately as to the States ratifying it whenever the States of Arkansas and Mississippi have ratified it and Congress has given consent thereto.

**ARTICLE III**

(a) The States which are parties to this Compact (hereinafter referred to as "party states") do hereby establish and create a joint agency which shall be known as the Arkansas-Mississippi Great River Bridge Authority (hereinafter referred to as "the authority"). The membership of each authority shall consist of five (5) representatives from the State of Mississippi, to be selected in such manner as may be provided by the laws enacted by the Legislature of the State of Mississippi, and five (5) members from the State of Arkansas, to be selected in such manner as determined by laws enacted by the Arkansas General Assembly. The terms of the members of such authority from each of the party states, the method of appointing successor members, and the method of filling vacancies on the authorities of the party states, shall be determined by the laws of Mississippi and Arkansas.

(b) The members of the authority shall not be compensated for services on the authority, but each member shall be entitled to actual and reasonable expenses incurred in attending meetings or incurred otherwise in the performance of his/her duties as a member of the authority.

(c) The members of the authority shall meet upon the call of the chairman and hold such other meetings as its business may require. Special meetings of the authority may be called by the chairman or upon written request of a majority of the members of the authority from

each of the party states. The authority shall choose annually a chairman and vice chairman from its members, and the chairmanship shall rotate each year among the party states, in order of their acceptance of this compact.

(d) The secretary of the authority (hereinafter provided for) shall notify each member in writing of all meetings of the authority in such a manner and under such rules and regulations as the authority may prescribe.

(e) The authority shall adopt rules and regulations for the transaction of its business; and the secretary shall keep a record of all its business and shall furnish a copy thereof to each member of the authority.

(f) It shall be the duty of the authority, in general, to promote, encourage, and coordinate the efforts of the party states to secure the development of the Arkansas-Mississippi Great River Bridge at or near Rosedale, Mississippi and McGehee-Dumas, Arkansas. Toward this end, the authority shall have power to:

(i) Hold hearings;

(ii) Conduct studies and surveys of all problems, benefits, and other matters associated with the construction of the Arkansas-Mississippi Great River Bridge, and to make reports thereon;

(iii) Acquire by gift, grant or otherwise, from local, state, federal, or private sources, such money or property as may be provided for the proper performance of their function, and to hold and dispose of the same;

(iv) Cooperate with other public or private groups, whether local, state, regional, or national, having an interest in the bridge construction;

(v) Formulate and execute plans and policies for emphasizing the purpose of this Compact before the Congress of the United States and other appropriate officers and agencies of the United States; and

(vi) Negotiate with one or more railroads in the State of Mississippi and the State of Arkansas, and with the appropriate federal authorities for the construction of the Arkansas-Mississippi Great River Bridge as a combined highway-railroad bridge, with the cost of the railroad portion of the bridge to be provided from sources other than funds of the two party states, unless moneys to defray part or all of the cost of constructing such railroad portion of the bridge is appropriated by the legislatures of the party states. If necessary, the authority may enter into a contract with one or more railroads and/or the appropriate agencies of Congress to borrow funds for the construction of such railroad portion of the bridge, to be reimbursed, including all costs of principal, interest and other costs in connection with such indebtedness, by revenues derived from rental fees, grants, or other charges, with such indebtedness to be secured solely by a pledge of such revenues, and such indebtedness shall not be an obligation upon the revenues or the full faith and credit of the party states to this compact, unless laws authorizing such pledge are enacted by the party states;

(vii) Exercise such other powers as may be appropriate to enable it to accomplish its functions and duties in connection with the construction of the Arkansas-Mississippi Great River Bridge as a highway bridge or a combined highway-railroad bridge, and to carry out the purposes of this compact.

#### ARTICLE IV

The authority shall appoint a secretary, who shall be a person familiar with the nature, procedures, and significance of the bridge construction and the informational, educational, and publicity methods of stimulating general interest in such developments, and who shall be the compact administrator. The term of office of the secretary shall be at the pleasure of the authority and such officer shall receive such compensation as the authority shall prescribe. The secretary shall maintain custody of the authority's books, records, and papers, which shall be kept by the secretary at the office of the authority, and shall perform all functions and duties and exercise all powers and authorities which may be delegated to the secretary of the authority.

#### ARTICLE V

Each party state agrees that its legislature may, in its discretion, from time to time make available and pay over to the authority funds for the establishment and operation of the authority. The contribution of each party state will be in equal amounts.

#### ARTICLE VI

Nothing in this compact shall be construed so as to conflict with any existing statute, or to limit the powers of any party state, or to repeal or prevent legislation, or to authorize or permit curtailment or diminution of any other bridge project, or to affect any existing or future cooperative arrangement or relationship between any federal agency and a party state.

#### ARTICLE VII

This compact shall continue in force and remain binding upon each party state until the legislature or governor of each or either state takes into action to withdraw therefrom; provided that such withdrawal shall not become effective until six (6) months after the date of the action taken by the legislature or governor. Notice of such action shall be given to the other party state or states by the secretary of state of the party state which takes such action.

**History.** Acts 1985, No. 27, § 1; A.S.A. 1947, § 76-2105.



**27-89-302. State highway commissioners to serve on compact authority — Filling of vacancies.**

(a) The five (5) members to represent the State of Arkansas on the Arkansas-Mississippi Great River Bridge Construction Compact shall be the five (5) members serving on the State Highway Commission established pursuant to the provisions of Arkansas Constitution, Amendment 42, and members of the State Highway Commission shall serve on the compact authority during their respective terms as members of the State Highway Commission.

(b) Vacancies that occur in any member position on the authority from the State of Arkansas shall be filled by the successor member of the highway commission appointed to serve thereon, in the manner set forth in Arkansas Constitution, Amendment 42.

**History.** Acts 1985, No. 27, § 2; A.S.A. 1947, § 76-2106.

**27-89-303. Powers granted to members of authority — Directions for other state officers.**

(a) There is granted to the members of the authority for the State of Arkansas, and to the compact administrator, all the powers provided for in the Arkansas-Mississippi Great River Bridge Construction Compact Authority.

(b) All officers of the State of Arkansas are authorized and directed to do all things falling within their respective jurisdictions, which are necessary or incidental to carrying out the purposes of the Arkansas-Mississippi Great River Bridge Construction Compact.

**History.** Acts 1985, No. 27, § 3; A.S.A. 1947, § 76-2107.

**27-89-304. Compact operative when executed and ratified.**

(a) When the Chairman of the State Highway Commission shall have executed the compact on behalf of this state and shall cause a verified copy thereof to be filed with the Secretary of State, and when the compact shall have been ratified by the State of Mississippi, then the compact shall become operative and effective as between the States of Arkansas and Mississippi.

(b) The Chairman of the State Highway Commission is authorized and directed to take such action as may be necessary to complete the exchange of official documents between this state and the State of Mississippi with respect to ratifying the compact.

**History.** Acts 1985, No. 27, § 4; A.S.A. 1947, § 76-2108.

**27-89-305. Use of state funds — Appropriation necessary for construction funds.**

The State Highway Commission is authorized to use moneys appropriated for the operation of the Arkansas State Highway and Transportation Department for payment of the State of Arkansas’s pro rata share of the administrative costs of the compact authority, but shall have no authority to authorize, or contract for, the use of moneys in the State Highway and Transportation Department Fund for the construction of the Arkansas-Mississippi Great River Bridge, except upon specific authorization and appropriation thereof by the General Assembly.

**History.** Acts 1985, No. 27, § 5; A.S.A. 1947, § 76-2109.

**27-89-306. Application to Congress for consent and approval — Binding effect of compact.**

The authority shall have power to apply to the Congress of the United States for its consent and approval of the compact; but in the absence of such consent of Congress and until that consent shall have been secured, the compact shall be binding upon the State of Arkansas in all respects permitted by law for the two (2) States of Arkansas and Mississippi without the consent of Congress to cooperate, for the purposes enumerated in the compact, and in the manner provided therein.

**History.** Acts 1985, No. 27, § 6; A.S.A. 1947, § 76-2110.

**CHAPTER 90**  
**TOLL HIGHWAYS**

SUBCHAPTER.

- 1. GENERAL PROVISIONS. [RESERVED.]
- 2. TURNPIKE PROJECTS AND TOLLS.

**SUBCHAPTER 1 — GENERAL PROVISIONS**  
[Reserved]

**SUBCHAPTER 2 — TURNPIKE PROJECTS AND TOLLS**

SECTION.

- 27-90-201. Definitions.
- 27-90-202. Authority of commission to undertake turnpike projects.
- 27-90-203. Authority of commission to collect tolls.

SECTION.

- 27-90-204. Revenue — Use of revenues.
- 27-90-205. Issuance to finance turnpike projects.
- 27-90-206. Authorizing resolution — Terms.
- 27-90-207. Trust indenture.

## SECTION.

27-90-208. Sale.

27-90-209. Execution.

27-90-210. Liability on bonds.

27-90-211. Security and payment.

27-90-212. Refunding bonds.

## SECTION.

27-90-213. Scope of revenue bonds as securities.

27-90-214. Tax exemption.

27-90-215. Construction — Scope of authority.

**Effective Dates.** Acts 2003, No. 296, § 11: Mar. 4, 2003. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that there is an immediate need for the planning and development of certain turnpike projects within the State of Arkansas, and that the planning and development will be facilitated by this act having immediate effect. Therefore, an emergency is declared to exist and this act

being immediately necessary for the preservation of the public peace, health and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

## 27-90-201. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Bonds", "turnpike revenue bonds", or "revenue bonds" means revenue bonds or notes of the State Highway Commission authorized under and issued under this subchapter;

(2) "Commission" means the State Highway Commission;

(3)(A) "Costs" or "project costs" means all direct and indirect costs incurred in connection with the acquisition of rights-of-way for and constructing and equipping turnpike projects, including, without limitation:

(i) The cost of the acquisition of all lands, rights-of-way, property, rights, easements, and interests acquired by the commission;

(ii) The cost of demolishing or removing buildings or structures on the land so acquired;

(iii) The cost of acquiring any lands to which those buildings or structures may be moved;

(iv) The cost of all machinery and equipment;

(v) Financing charges, interest prior to and during construction and for a period after construction;

(vi) The establishment of necessary funds and reserves;

(vii) The cost of traffic estimates, engineering fees, legal fees, plans, specifications, surveys, and estimates of cost and revenues;

(viii) Any other expenses or expenditures necessary or incidental to determining the feasibility or practicability of a turnpike project, administration expense; and

(ix) Any other expense, cost, or expenditure necessary or incidental to the construction of a turnpike project, the finance of the



construction, and the placement of the turnpike project into operation.

(B) Any obligation, expense, or expenditure incurred or made by the commission or any other state agency or department for matters pertaining to a turnpike project, including, without limitation, feasibility studies, traffic surveys, borings, preparation of plans and specifications, engineering services, and any other expenses, costs, or expenditures of whatever nature that shall be regarded as part of the costs of a turnpike project and that may be reimbursed to the commission or other agency or department of the state out of the proceeds of revenue bonds or out of any other available funds of the commission;

(4) "Debt service" means the amounts necessary for paying principal, interest, trustee's and paying agent's fees, rebate costs, and the amounts necessary to establish and maintain debt service reserves as provided in the authorizing resolution or trust indenture identified under this subchapter;

(5) "Owner" means all individuals, partnerships, associations, corporations, or organizations having any title or interest in any property, rights, easements, and interest authorized to be acquired by and under the authority of this subchapter;

(6) "Person" means any individual, partnership, corporation, or other entity recognized by law as having power to contract;

(7) "Project" or "turnpike project" means any express highway or highway on or a part of the state highway system constructed, reconstructed, or rehabilitated under the provisions of this subchapter by the commission, including, without limitation, lands, rights-of-way, bridges, tunnels, overpasses, underpasses, interchanges, entrance plazas, approaches, toll houses, administration buildings, storage buildings, other buildings, and facilities which the commission may deem necessary or desirable for the operation of a turnpike project, together with all property, rights, easements, rights-of-way, and interest that may be acquired by the commission for or in connection with the construction or operation of a turnpike project; and

(8) "Revenues" or "turnpike project revenues" means, without limitation, all tolls, rentals, license and permit revenues, contractual receipts, gifts, grants, moneys, charges, and other funds, including federal aid highway funds, and property of whatever nature coming into the possession of or under the control of the commission by virtue of this subchapter, except the proceeds derived from the sale of revenue bonds issued under this subchapter.

**History.** Acts 1995, No. 1232, § 1;  
2003, No. 296, § 1.

**27-90-202. Authority of commission to undertake turnpike projects.**

(a) The State Highway Commission is authorized and empowered to:

(1)(A) Acquire by purchase or exercise of its powers of eminent domain sites and rights-of-way for, and construct, maintain, repair, and operate, turnpike projects at such locations as it shall determine in accordance with proper design and construction standards.

(B)(i) Turnpike projects shall be constructed in accordance with applicable laws pertaining to competitive bidding, contracting, performance and payment bonds, and other matters applicable to similar highway construction by the commission.

(ii) However, turnpike projects developed in cooperation with other states, agencies, or political subdivisions thereof or nonmember nonstock transportation corporations created under the laws of another state may be developed, operated, and maintained on the basis of contracts for the design, engineering, procurement and construction, and like arrangements for the integrated development of turnpike projects or pursuant to the basis for the development, operation, and maintenance of a turnpike project permitted under the laws of another state upon the commission's setting forth in a resolution its finding that any such arrangement is the preferable method for development of the turnpike project and the reasons for such finding;

(2) Apply for, receive, accept, and use any moneys and properties from agencies of the United States Government, from any state or other governmental agency or political subdivision, from any public or private corporation, agency, or organization of any nature, and from any individual or group of individuals;

(3) Establish accounts in one (1) or more banks and thereafter from time to time make deposits in and withdrawals from such accounts and otherwise invest or reinvest its money;

(4) Obtain the necessary funds for financing the objects specified in this subchapter, including without limitation the proceeds of the sale of revenue bonds as authorized in this subchapter;

(5) Fix, revise from time to time, charge, and collect tolls for transit over each turnpike project constructed;

(6) Establish rules and regulations for the use of each turnpike project;

(7) Employ consulting engineers, attorneys, accountants, construction and financial experts, superintendents, and other employees and agents that may be necessary in its judgment;

(8) Enter into and implement any agreements or compacts with the United States or any state or any department or agency of the United States or of any state, or a political subdivision of any state, or any person concerning operation, revenues, or other matters pertaining to planning, financing, constructing, and operating turnpike projects leading from this state into another state or states and turnpike

projects to be developed and operated jointly, whether by the commission, by another party to the agreement or compact, by an agency created pursuant to the agreement or compact, or by another person, whether or not leading from this state into another state or states; and

(9) Take such other action, not inconsistent with law, as may be necessary or desirable to carry out the powers conferred by this subchapter and to carry out the intent and purposes of this subchapter.

(b) Each turnpike project shall be separately designated by appropriate name or number and may be constructed, reconstructed, rehabilitated, or extended in sections and stages as the commission may from time to time determine.

**History.** Acts 1995, No. 1232, § 1;  
2003, No. 296, § 2.

### **27-90-203. Authority of commission to collect tolls.**

(a) The State Highway Commission is authorized to fix, revise, charge, and collect tolls for the use of each turnpike project and the different parts or sections thereof and to contract with any person, partnership, association, corporation, or organization desiring the use of any part thereof, including the right-of-way adjoining the paved portion, for the placing thereon telephone, telegraph, electric light or power lines, and other facilities or improvements, or for any other purpose, and to fix the terms, conditions, rents, and rates of charges for use.

(b) The tolls authorized by this subchapter shall not be subject to supervision or regulation by any other commission, board, bureau, or agency of the State of Arkansas.

**History.** Acts 1995, No. 1232, § 1;  
2003, No. 296, § 3.

### **27-90-204. Revenue — Use of revenues.**

(a) Revenues derived from any turnpike project that are used to secure revenue bonds shall be deposited in a bank or banks selected by the State Highway Commission.

(b) The turnpike project revenues are declared to be cash funds, restricted in their use, and dedicated and to be used solely as authorized in this subchapter.

(c)(1) The revenues shall be used for the following purposes subject to the order and priority provided in the trust indenture or the authorizing resolution:

(A) To pay the reasonable expenses of maintenance, repair, and operation of the turnpike project or projects involved;

(B) To pay as due the debt service on all revenue bonds to which revenues of the turnpike project or projects are pledged, including the original issue or issues, bonds issued for reconstruction and extension, and refunding bonds, as authorized in this subchapter;



(C) For the establishing or, once established, for maintaining any reserves as provided in the authorizing resolution or the trust indenture;

(D) For the redemption of bonds prior to maturity, if provision is made for redemption, all as shall be specified in detail in the trust indenture, and all indentures supplemental thereto, securing the bonds;

(E) To pay as due the debt service on turnpike projects other than the turnpike project from which derived; and

(F) For other lawful commission purposes.

(2) Any other revenue shall be transferred to the Treasurer of State, who shall transfer such revenue to the Arkansas State Highway and Transportation Department, there to be used for the maintenance, operation, and improvement required by the department in carrying out its functions, powers, and duties.

(d) Turnpike project revenues shall not be subject to the provisions in § 27-70-206.

**History.** Acts 1995, No. 1232, § 1;  
2003, No. 296, § 4.

### **27-90-205. Issuance to finance turnpike projects.**

(a) The State Highway Commission may issue turnpike revenue bonds from time to time in principal amounts sufficient to pay the costs of a turnpike project.

(b) For a turnpike project:

(1) There may be more than one (1) issue of bonds;

(2) There may be one (1) issue sold and delivered in series; and

(3) There may be a subsequent issue or subsequent issues of bonds for all or any of the following purposes:

(A) Completion of the construction of a turnpike project;

(B) Reconstruction work on a turnpike project when the amount involved is such that it cannot be handled as an item of maintenance and repair out of turnpike project revenues;

(C) The extension of a turnpike project; or

(D) The refund of any prior issues of bonds as provided under § 27-90-212.

(c) The issues under subdivision (b)(3) of this section are subject in each instance to such conditions concerning available and estimated turnpike project revenues and other conditions ensuring prompt payment of the debt service on subsequent bond issues as the commission shall determine and specify in its authorizing resolution or in the trust indenture securing the bonds.

(d) In all instances, priority between and among issues and successive issues shall be controlled by the authorizing resolution or by the trust indenture securing the bonds.

(e) Turnpike revenue bonds shall have all the qualities of negotiable instruments under the laws of the State of Arkansas, subject to the provisions of this subchapter regarding registration.

**History.** Acts 2003, No. 296, § 5.

### **27-90-206. Authorizing resolution — Terms.**

(a) Turnpike revenue bonds shall be authorized by resolution of the State Highway Commission, the authorizing resolution.

(b) The bonds may be registrable as to both principal and interest without coupons and may be made exchangeable for bonds of another denomination.

(c) The bonds may:

- (1) Be in such form and denominations;
- (2) Have such date or dates;
- (3) Mature at such time or times;
- (4) Bear interest payable at such time or times and at such rate or rates, including variable rates;
- (5) Be payable at such place or places within or without the State of Arkansas;
- (6) Be subject to such terms of redemption in advance of maturity at such prices, including such premiums; and
- (7) Contain such terms and provisions all as the commission may determine.

(d) The authorizing resolution may contain any other terms, covenants, and conditions that are deemed desirable by the commission, including, without limitation:

- (1) Those pertaining to the custody, investment, and application of bond proceeds;
- (2) The maintenance and investment of various funds and reserves;
- (3) The nature and extent of the security; and
- (4) The rights, duties, and obligations of the commission and of the holders and registered owners of the bonds.

(e) Interest on the bonds may be payable currently or on a compound basis.

(f) The commission may enter into any contracts which it determines to be necessary or appropriate to achieve desirable effective interest rates on bonds and the mitigation of investment and interest rate risk by means of, but not limited to, contracts commonly known as investment and interest rate contracts, funding agreements, interest rate swap agreements, or contracts providing for payments based on levels of or changes in interest rates, or contracts.

**History.** Acts 2003, No. 296, § 5.

**27-90-207. Trust indenture.**

(a) The authorizing resolution may provide for the execution by the State Highway Commission with a bank or trust company within or without the State of Arkansas of a trust indenture.

(b) The trust indenture may control the priority between and among successive issues and series and may contain any other terms, covenants, and conditions that are deemed desirable, including without limitation:

(1) Terms pertaining to the custody, application, and investment of the proceeds of bonds;

(2) The collection, disposition, and investment of turnpike project revenues;

(3) The maintenance and investment of various funds and reserves;

(4) The nature and extent of the security and the rights, duties, and obligations of the commission and the trustee for the holders or registered owners of the bonds; and

(5) The rights of the holders or registered owners of the bonds.

**History.** Acts 2003, No. 296, § 5.

**27-90-208. Sale.**

(a) Bonds issued under this subchapter may be sold at public or private sale, as determined by the State Highway Commission.

(b) If sold at public sale, the bonds shall be sold on electronic or sealed bids, and notice of the sale shall be published once in a newspaper published in the City of Little Rock and having a general circulation throughout the State of Arkansas at least twenty (20) days prior to the date of sale.

(c)(1) In either case, the bonds may be sold at a price as the commission may accept, including sale at a premium or a discount.

(2) In no event shall any bid or price be accepted which results in an interest cost exceeding that permitted by law.

**History.** Acts 2003, No. 296, § 5.

**27-90-209. Execution.**

(a) Bonds shall be executed by the manual or facsimile signatures of the chair of the State Highway Commission and the secretary of the commission or otherwise as specified in the resolution authorizing the bonds.

(b) In case any of the officers or the secretary whose signatures appear on the bonds or coupons shall cease to be officers or the secretary before the delivery date of the bonds, their signatures nevertheless shall be valid and sufficient for all purposes.

**History.** Acts 2003, No. 296, § 5.



**27-90-210. Liability on bonds.**

(a) It shall be plainly stated on the face of each bond that it has been issued under this subchapter, and the bonds issued shall be obligations only of the State Highway Commission and shall be special obligations, secured solely by pledges of turnpike project revenues or specifically designated federal grants.

(b) No member of the commission shall be personally liable on the bonds or for any damages sustained by anyone in connection with any contracts entered into in carrying out the purposes and intent of this subchapter, unless that member shall have acted with a corrupt intent.

**History.** Acts 2003, No. 296, § 5.

**27-90-211. Security and payment.**

(a)(1) The principal of and interest on all bonds issued under this subchapter shall be secured by a pledge of, and shall be payable from turnpike project revenues.

(2) The pledge of revenues to the payment of the principal of and interest on the bonds shall be valid and binding from the time the pledge is made.

(3) The turnpike project revenues so pledged shall immediately be subject to the lien of the pledge without any physical delivery thereof or further act.

(4) The lien of the pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the commission, irrespective of whether such parties have notice thereof.

(5) Neither the authorizing resolution nor any trust indenture by which a pledge is created need be filed or recorded in any office or other place except in the records of the State Highway Commission.

(b)(1) Principal and interest shall not be secured by a statutory or foreclosable mortgage lien on a turnpike project, any of the facilities of or in connection with a turnpike project, or any other facilities owned or operated by the commission.

(2) The term "facilities" includes all real and personal property owned or operated by the commission.

(c)(1) Each resolution authorizing the issuance of bonds and each trust indenture executed and delivered to secure the bonds in this subchapter shall constitute a contract by and between the commission and the holders and registered owners of the bonds issued under the resolution or trust indenture.

(2) Any contract and all covenants, agreements, and obligations therein, including without limitation an obligation on the part of the commission to operate a turnpike project as a revenue-producing undertaking so long as any bonds are outstanding, to maintain the turnpike project, and to charge and collect turnpike project revenues in required amounts, all as specified in detail in the authorizing resolu-

tion, the trust indenture, and in this subchapter shall be promptly performed in accordance with the terms and provisions of the contract.

(3) The contract and all rights of the trustee and holders and registered owners of the bonds and the obligations of the commission may be enforced by mandamus or any other appropriate proceeding at law or in equity.

**History.** Acts 2003, No. 296, § 5.

### **27-90-212. Refunding bonds.**

(a) Revenue bonds may be issued for the purpose of refunding any bonds issued under this subchapter.

(b) Refunding bonds may be combined into a single issue with revenue bonds issued for the purpose of completing, reconstructing, or extending the turnpike project.

(c) Refunding bonds may either be sold or delivered in exchange for the bonds being refunded.

(d) If sold, the proceeds may be either applied to the payment of the bonds being refunded or deposited in trust and there maintained in cash or investments for the retirement thereof, as shall be specified in the authorizing resolution or trust indenture securing the refunding bonds.

(e) The authorizing resolution and the trust indenture securing the refunding bonds may provide that the refunding bonds shall have the same priority of lien on turnpike project revenues pledged for their payment as was enjoyed by the bonds refunded thereby.

(f) Refunding bonds shall be sold and secured in accordance with the provisions of this subchapter pertaining to the sale and security of revenue bonds.

**History.** Acts 2003, No. 296, § 5.

### **27-90-213. Scope of revenue bonds as securities.**

(a) Revenue bonds issued under this subchapter are made securities in which all insurance companies, trust companies, banks, investment companies, executors, administrators, trustees, and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them.

(b) The bonds are made securities which may properly and legally be deposited with and received by any state, county, or municipal officer or any agency or political subdivision of the state for any purpose for which the deposit of bonds or obligations of the state is now or may be authorized by law.

(c) Any municipality or county, or any board, commission, or other authority established by any municipality or county, or the boards of trustees, respectively, of any retirement fund or retirement system created by or pursuant to authority conferred by the General Assembly

may in its discretion invest any of its funds not immediately needed for its purposes in bonds issued under this subchapter.

(d) Bonds issued under this subchapter shall be eligible to secure the deposit of public funds.

**History.** Acts 2003, No. 296, § 5.

#### **27-90-214. Tax exemption.**

(a) The principal of and interest on bonds issued under this subchapter shall be exempt from all state, county, and municipal taxes, and this exemption shall include income, inheritance, and estate taxes.

(b) All turnpike projects and all the properties thereof are legislatively determined and declared to be public properties used exclusively for public purposes. The legislative intent is that turnpike projects and all properties thereof shall be exempt from ad valorem taxes under and pursuant to the provisions of Arkansas Constitution, Article 16, § 5.

**History.** Acts 2003, No. 296, § 5.

#### **27-90-215. Construction — Scope of authority.**

(a)(1) This subchapter shall be construed liberally.

(2) All acts and activities authorized by this subchapter are legislatively determined and declared to be essential governmental functions.

(b) The State Highway Commission is empowered to take such action and do or cause to be done such things as shall be necessary or desirable to accomplish and implement the purposes and intent of this subchapter according to the import of this subchapter with the action taken by the commission or the things done or caused to be done by the commission pursuant to the provisions of this subchapter being determined and declared to be ministerial rather than legislative in nature.

(c) Nothing contained in this subchapter shall be construed to restrict the commission or the State of Arkansas in the issuance or incurrence of debt under other applicable laws.

**History.** Acts 2003, No. 296, § 5.



**CHAPTERS 91-99**

[Reserved]

***SUBTITLE 7. WATERCOURSES AND NAVIGATION*****CHAPTER 100****GENERAL PROVISIONS**

[Reserved]

**CHAPTER 101****WATERCRAFT****SUBCHAPTER.**

1. GENERAL PROVISIONS.
2. OPERATION.
3. MOTORBOAT REGISTRATION AND NUMBERING.
4. FUNDS — MARINE SANITATION.
5. BOATER SAFETY.
6. PERSONAL WATERCRAFT.
7. BOAT IDENTIFICATION ACT.

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**A.C.R.C. Notes.** References to “this chapter” in Subchapters 1-4 may not apply to Subchapters 5 and 6 which were enacted subsequently.

**RESEARCH REFERENCES**

**Am. Jur.** 12 Am. Jur. 2d, Boats, § 7 et seq.

**SUBCHAPTER 1 — GENERAL PROVISIONS****SECTION.**

- 27-101-101. Policy.
- 27-101-102. Applicability — Effect on ordinances, regulations, etc.
- 27-101-103. Definitions.
- 27-101-104. Penalties.
- 27-101-105. Enforcement — Failure to obey officer.
- 27-101-106. Jurisdiction.

**SECTION.**

- 27-101-107. Establishment of rules and regulations.
- 27-101-108. Filing and publication of rules and regulations.
- 27-101-109. Remission of fines.
- 27-101-110. Deposit of funds in State Treasury.
- 27-101-111. Distribution of funds.

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**Effective Dates.** Acts 1995, No. 517, § 22; May 1, 1995. Emergency clause provided: “It is hereby found and determined

by the General Assembly that the boating safety laws of the State of Arkansas are in immediate need of revision, including, in-

creased penalties for violation of the state's boating laws; providing capacity restrictions for loading passengers and cargo on vessels; providing penalties for negligent operation of vessels; providing restrictions for personal flotation devices; providing restrictions for vessel lighting after dark; and providing procedures for investigating boating accidents. Further, it is found that operation of vessels on the waters of the state under the current laws are creating unnecessary dangers to the life and property of the citizens of this state, and that increasing the penalties for this dangerous conduct and providing the stated restrictions for vessel operators will reduce the number of accidents and injuries to persons and property on the waters of the state. Therefore, an emergency is hereby declared to exist, and this act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after May 1, 1995."

Acts 2003, No. 1774, § 17: Apr. 22, 2003. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the discharge of untreated sewage from vessels into waters of the State of Arkansas poses a serious threat to the public health and the environment; that such a serious threat needs to be rectified immediately; and that this act improves the state's ability to enforce laws relative to marine sanitation. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

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### 27-101-101. Policy.

It is declared to be the policy of this state to promote safety for persons and property in and connected with the use, operation, and equipment of vessels and to promote uniformity of laws relating thereto.

**History.** Acts 1959, No. 453, § 1; A.S.A. 1947, § 21-221.

### CASE NOTES

**Cited:** *St. Hilaire Moyer v. Henderson*, 364 F. Supp. 1286 (E.D. Ark. 1973).

### 27-101-102. Applicability — Effect on ordinances, regulations, etc.

(a) The provisions of this chapter and of other applicable laws of this state shall govern the operation, equipment, numbering, and all other matters relating to the operation, equipment, and numbering whenever any vessel shall be operated on the waters of this state or when any activity regulated by this subchapter shall take place on the waters of this state.

(b) Nothing in this subchapter shall be construed to:

(1) Prevent the adoption of any ordinance or local law relating to operation and equipment of vessels, the provisions of which are

identical to or are not in conflict with the provisions of this subchapter, amendments thereto, or regulations issued thereunder;

(2) Grant the use or power to the Arkansas State Game and Fish Commission or to any person to authorize the use of any vessel on any waters of this state where the use of vessels shall be prohibited; or

(3) Permit the use of vessels on any municipally or privately owned city water supply in violation of the applicable laws, rules, or regulations that may have been or may be established for the protection of the public health in preserving the water supply for human consumption.

**History.** Acts 1959, No. 453, § 13;  
A.S.A. 1947, § 21-233; Acts 2003, No.  
1774, § 1.

### **27-101-103. Definitions.**

As used in this chapter unless otherwise specified in the particular subchapter:

(1) "Commission" means the Arkansas State Game and Fish Commission;

(2) "Length" means the extreme deck fore-and-aft measurement of a vessel;

(3) "Marina" means a dock or basin providing moorings for motorboats and offering supply, repair, or other services for remuneration;

(4) "Marine sanitation device" means equipment that is identified by the United States Coast Guard as meeting the standards of the United States Environmental Protection Agency to eliminate the discharge of untreated sewage from vessels and is a device that receives, treats, retains, or discharges sewage;

(5) "Motorboat" means any vessel operated upon water and which is propelled by sail or machinery, whether or not the machinery is the principal source of propulsion but shall not include a vessel that has a valid marine document issued by the United States Customs and Border Protection or any federal agency successor thereto;

(6) "Operate" means to navigate or otherwise use a motorboat or a vessel;

(7) "Operator" means a person who is controlling the speed and direction of a vessel or a person who is in direct physical control of a vessel;

(8)(A) "Owner" means a person other than a lienholder having the property in or title to a motorboat.

(B) "Owner" includes a person entitled to the use or possession of a motorboat subject to an interest in another person reserved or created by agreement and securing payment or performance of an obligation, but "owner" excludes a lessee under a lease not intended as security;

(9) "Person" means an individual, partnership, firm, corporation, association, or other entity;

(10) "Personal watercraft" means a vessel which uses an inboard motor powering a water jet pump as its primary source of motive power



and which is designed to be operated by a person sitting, standing, or kneeling on the vessel rather than in the conventional manner of sitting or standing inside the vessel;

(11) "Vessel" means every description of watercraft, other than a seaplane on the water, used or capable of being used as a means of transportation;

(12)(A) "Water sport activity" means an activity that involves a person being towed by a motorboat, personal watercraft, or other vessel in waters of this state.

(B) "Water sport activity" shall include, but not be limited to, any of the following activities:

- (i) Barefooting;
- (ii) Wake boarding;
- (iii) Wake surfing;
- (iv) Water skiing;
- (v) Water sledding; or
- (vi) Water tubing.

(C) "Water sport activity" does not include organized water carnivals, water skiing exhibitions, or other organized water sports exhibitions; and

(13)(A) "Waters of this state" means any public waters within the territorial limits of the State of Arkansas.

(B) However, waters that are confined within a pond, tank, or lake, situated entirely on the premises of a single owner, and that except under abnormal flood conditions are in no way connected by water or with any other flowing stream or body of water or with any other body of water not situated on the premises of the owner are declared to be privately owned waters and shall not be construed to be waters of this state.

**History.** Acts 1959, No. 453, § 2; 1961, 122, §§ 1, 7; 1995, No. 517, § 1; 2003, No. 423, § 1; 1973, No. 395, § 1; A.S.A. 1774, § 2; 2005, No. 1297, § 1. 1947, §§ 21-222, 21-248; Acts 1987, No.

## **27-101-104. Penalties.**

(a) Any person who violates any provision of §§ 27-101-202(8), 27-101-203, 27-101-301, 27-101-303 — 27-101-306, and 27-101-308 — 27-101-312 shall be guilty of a misdemeanor and shall be subject to a fine of not less than one hundred dollars (\$100) and not to exceed two hundred fifty dollars (\$250) for each violation.

(b) Any person who violates any provision of §§ 27-101-202(2)-(6), (9), and (12), and 27-101-204 shall be guilty of a misdemeanor and shall be subject to a fine of not less than one hundred dollars (\$100) and not to exceed five hundred dollars (\$500) for each violation.

(c) Any person who violates any provision of § 27-101-202(1), (7), and (10)-(12) shall be guilty of a misdemeanor and shall be subject to a fine of not less than two hundred fifty dollars (\$250) and not to exceed

one thousand dollars (\$1,000) or imprisonment not to exceed six (6) months or both fine and imprisonment for each violation.

**History.** Acts 1959, No. 453, § 20; A.S.A. 1947, § 21-240; Acts 1995, No. 517, § 2.

**27-101-105. Enforcement — Failure to obey officer.**

(a)(1)(A) It shall be the duty of every sheriff, deputy sheriff, state police officer, and enforcement officer of the Arkansas State Game and Fish Commission to enforce the provisions of this chapter, except that it shall be the duty of the Department of Health separately to enforce the provisions of § 27-101-401 et seq.

(B) Certified law enforcement officers of the Department of Parks and Tourism and municipal police officers may enforce the provisions of this chapter.

(2) In the exercise of their duty to enforce the provisions of this chapter, they shall have the authority to stop and board any vessel subject to this chapter and to investigate any accident or violation involving vessels subject to this chapter.

(3) Upon investigation, they may direct the operator of any vessel in violation of this chapter to return to the dock where the voyage originated or to the nearest dock if appropriate.

(b) Failure to follow the directive of a law enforcement officer as set forth in subsection (a) of this section shall constitute a separate offense in addition to any violations with which the operator may be charged.

(c) Any person who violates the provisions of this section shall be guilty of a misdemeanor and subject to a fine not to exceed two hundred fifty dollars (\$250) or imprisonment not to exceed three (3) months, or both.

**History.** Acts 1959, No. 453, § 19; § 1; 1995, No. 517, § 3; 1999, No. 146, 1963, No. 140, § 4; A.S.A. 1947, § 21-239; § 1; 2003, No. 1774, § 3. Acts 1987, No. 122, § 5; 1993, No. 458,

**CASE NOTES**

**ANALYSIS**

Review.  
Stop Valid.

**Review.**

Defendant's argument that this section violated the Fourth Amendment to the United States Constitution and Ark. Const. Art. II, § 15 was not preserved for appeal because defendant never raised his argument regarding the constitutionality of the statute before the trial court; because defendant failed to raise his constitutional arguments below, the court of

appeals could not consider them on appeal. *Brewer v. State*, 2010 Ark. App. 275, — S.W.3d — (2010).

**Stop Valid.**

Trial court did not err in denying defendant's motion to suppress evidence an officer seized after he stopped defendant's boat because the stop was valid since the actions of defendant's passenger gave the officer probable cause to believe that a violation of § 27-101-202(9) had occurred; there was no indication from the record that the stop was prompted by anything other than the perceived violation by the

boat's passenger, and because the stop of defendant's boat was valid, it was then permissible for the officer to investigate further the indications of intoxication exhibited by defendant. *Brewer v. State*, 2010 Ark. App. 275, — S.W.3d — (2010).

### **27-101-106. Jurisdiction.**

Jurisdiction to try offenses under this subchapter shall be in the courts of the county where the person owning or operating the boat resides or in the county where the offense is committed or in any county through or by which the boat is being run or operated on the waters of this state at the time of the violation of this chapter.

**History.** Acts 1959, No. 453, § 22; A.S.A. 1947, § 21-242; Acts 2003, No. 1774, § 4.

### **RESEARCH REFERENCES**

**U. Ark. Little Rock L.J.** Owen, Survey of Arkansas Law: Civil Procedure, 2 U. Ark. Little Rock L.J. 177.

### **CASE NOTES**

#### **Criminal Offenses.**

This section vests jurisdiction in the circuit courts to try criminal offenses only, and the General Assembly did not intend to preempt §§ 16-58-118 [superseded] and

16-60-112 as to jurisdiction and venue for the redress of civil wrongs. *Garrett v. Galloway*, 263 Ark. 460, 565 S.W.2d 432 (1978).

### **27-101-107. Establishment of rules and regulations.**

(a) The Arkansas State Game and Fish Commission shall cooperate with agencies of the federal government in establishing rules and regulations with reference to the operation of vessels on any waters of this state that are maintained or controlled by federal agencies. It is the intention of this subsection to encourage the establishment of adequate regulations on federally controlled waters for the promotion of safety in the operation of vessels.

(b) Any law enforcement office of a subdivision of this state may make, at any time, but only after public notice, formal application to the commission for special rules and regulations with reference to the operation of vessels on any waters within its territorial limits, including, but not limited to, the establishment and marking of speed limits and no-wake zones and shall set forth therein the reasons which make the special rules or regulations necessary or appropriate.

(c)(1) The commission shall consider the application and approve the special rules and regulations or disapprove them and state in writing the commission's reasons for disapproving them within ninety (90) days of their submission or the rules and regulations shall be considered properly adopted by ordinance or local law.



(2) However, nothing in this subchapter shall prevent the commission from making special rules and regulations with reference to the operation of vessels on any waters within the territorial limits of any subdivision of this state where the local law enforcement office has not established a water patrol.

**History.** Acts 1959, No. 453, §§ 13, 18; A.S.A. 1947, §§ 21-233, 21-238; Acts 1987, No. 122, § 4.

### **27-101-108. Filing and publication of rules and regulations.**

(a) A copy of the regulations adopted pursuant to §§ 27-101-101 et seq., 27-101-201 et seq., 27-101-301 et seq., 27-101-501 et seq., and 27-101-601 et seq. and of any amendments of those regulations shall be filed in the offices of the Arkansas State Game and Fish Commission, the Secretary of State, the Arkansas State Library, and the Bureau of Legislative Research where each copy shall be preserved as a public record.

(b) A copy of the regulations adopted under § 27-101-401 et seq. and of any amendments of those regulations shall be filed in the offices of the Department of Health, the Secretary of State, the Arkansas State Library, and the Bureau of Legislative Research where each copy shall be preserved as a public record.

(c) Rules and regulations under this section shall be published by the responsible state agency in a convenient form for public use.

**History.** Acts 1959, No. 453, § 16; 1963, No. 140, § 3; A.S.A. 1947, § 21-236; Acts 2003, No. 1774, § 5.

### **27-101-109. Remission of fines.**

(a) All fines collected for violations of this chapter shall be remitted to the issuing law enforcement office to be used by that office for the administration and enforcement of this chapter.

(b) However, fines collected for violations of § 27-101-401 et seq. shall be remitted to the Department of Health for administration and enforcement of § 27-101-401 et seq.

**History.** Acts 1959, No. 453, § 21; 1963, No. 140, § 5; A.S.A. 1947, § 21-241; Acts 1987, No. 122, § 6; 2003, No. 1774, § 6.

**Publisher's Notes.** Acts 1965, No. 442; § 1, transferred certain duties of the county clerks to the Revenue Division of the Department of Finance and Administration. See Publisher's Notes to § 27-101-303. Acts 1965, No. 442, § 1 further provided that all fees which, under the provisions of Acts 1959, No. 453, as amended, were to be retained by the re-

spective county clerks should be deposited by the Commissioner of Revenues (now the Director of the Department of Finance and Administration) in the State Treasury as special revenues and the Treasurer of State should credit the fees to the Constitutional and Fiscal Agencies Fund to be used for the respective purposes provided by law. All fees to be credited to the Game Protection Fund under the provisions of Acts 1959, No. 453, as amended, were to be deposited by the Commissioner of Revenues with the Treasurer of State and

credited to the Game Protection Fund as provided by law. Acts 1965, No. 442, § 1, was repealed by Acts 1987, No. 122, § 8.

### **27-101-110. Deposit of funds in State Treasury.**

All fees collected by the Director of the Department of Finance and Administration under the provisions of this chapter shall be deposited as special revenues in the State Treasury to the credit of the Special Revenue Fund Account of the State Apportionment Fund. All these funds shall be credited to the Boating Safety Account Fund, which is established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State.

**History.** Acts 1987, No. 122, § 2; 2003, No. 1774, § 7. **Cross References.** Boating Safety Account Fund, § 19-6-453.

### **27-101-111. Distribution of funds.**

(a) On or before the fifth of the month next following the month during which the funds shall have been received by him or her, the Treasurer of State shall distribute the funds in the manner provided in this section:

(1) Three percent (3%) of the amount to the Constitutional Officers Fund and the State Central Services Fund to be used for defraying the necessary expenses of the state government; and

(2) Ninety-seven percent (97%) of the amount as follows:

(A) Eight percent (8%) to the Constitutional Officers Fund and the State Central Services Fund;

(B) Thirty-four percent (34%) to the Game Protection Fund for use by the Arkansas State Game and Fish Commission as provided by law;

(C) Thirty-four percent (34%) to the County Aid Fund, which, on or before the tenth of the month following the end of each calendar quarter, shall be remitted by state warrants to the various county treasurers in the proportions thereof as between the respective counties that the total of the fees produced from each county bears to the total of the fees produced from all counties as certified by the Director of the Department of Finance and Administration to the Treasurer of State; and

(D) Twenty-four percent (24%) to the Marine Sanitation Fund for use by the Department of Health to administer a marine sanitation program.

(b) Upon receipt of any fees, each county treasurer shall deposit them into the county treasury to the credit of the boating safety and enforcement fund, if the county sheriff of that county has established a patrol on the waterways within the county.

(c)(1) In the event the county sheriff has not established a patrol on the waterways within the county and if either the county or any city or town within a county, or both, has established an emergency rescue service, each county treasurer shall deposit his or her county's share of

the total fees collected into the county emergency rescue fund for use exclusively by either the county or the cities within the county, or both, for operating and maintaining emergency rescue services within the county and cities within the county. After the treasurer receives the funds, he or she shall divide the funds in the county emergency rescue fund equally among the county and the cities within the county, if any, having emergency rescue services.

(2) Otherwise, the fees shall be deposited into the Game Protection Fund for use by the Arkansas State Game and Fish Commission.

**History.** Acts 1987, No. 122, § 2; 2003, No. 1774, § 8.

SUBCHAPTER 2 — OPERATION

SECTION.

- 27-101-201. Liability of owner, renter, operator, or lessee of vessel for injury or damage.
- 27-101-202. Restrictions on manner of operation.
- 27-101-203. Equipment requirements.

SECTION.

- 27-101-204. Duties of boat livery owner.
- 27-101-205. Collision or accident.
- 27-101-206. Law enforcement vessels exempt from § 27-101-202.
- 27-101-207. Liability insurance required.

**Effective Dates.** Acts 1995, No. 517, § 22: May 1, 1995. Emergency clause provided: “It is hereby found and determined by the General Assembly that the boating safety laws of the State of Arkansas are in immediate need of revision, including, increased penalties for violation of the state’s boating laws; providing capacity restrictions for loading passengers and cargo on vessels; providing penalties for negligent operation of vessels; providing restrictions for personal flotation devices; providing restrictions for vessel lighting after dark; and providing procedures for investigating boating accidents. Further,

it is found that operation of vessels on the waters of the state under the current laws are creating unnecessary dangers to the life and property of the citizens of this state, and that increasing the penalties for this dangerous conduct and providing the stated restrictions for vessel operators will reduce the number of accidents and injuries to persons and property on the waters of the state. Therefore, an emergency is hereby declared to exist, and this act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after May 1, 1995.”

RESEARCH REFERENCES

**ALR.** Criminal liability for injury or death caused by operation of pleasure boat. 8 A.L.R.4th 886.

Liability of owner or operator of pleasure boat for injury or death of guest passenger. 35 A.L.R.4th 104.

27-101-201. Liability of owner, renter, operator, or lessee of vessel for injury or damage.

(a) The owner, renter, operator, or lessee of a vessel shall be liable for any injury or damage occasioned by the negligent operation of the



vessel, whether negligence consists of violating the provisions of the statutes of this state or neglecting to observe such ordinary care and such operation as the rules of the common law require.

(b)(1) The owner shall not be liable, however, unless the vessel is being used with his or her express or implied consent.

(2)(A) The owner shall not be strictly liable to a renter, operator, or lessee for any injury or damage occasioned by the negligent operation of the vessel by the renter, operator, or lessee.

(B) The liability of the owner for injury or damage suffered by a renter, operator, or lessee shall be determined by comparing the fault of the owner and the fault of the renter, operator, or lessee in accordance with §§ 16-55-216 and 16-64-122.

(c) It shall be presumed that the vessel is being operated with the knowledge and consent of the owner if at the time of the injury or damage it is under the control of his or her spouse, father, mother, brother, sister, son, daughter, or other immediate member of the owner's family.

(d) Nothing contained in this section shall be construed to relieve any other person from any liability that he or she would otherwise have, but nothing contained in this section shall be construed to authorize or permit any recovery in excess of injury or damage actually incurred.

**History.** Acts 1959, No. 453, § 14;  
A.S.A. 1947, § 21-234; Acts 2005, No.  
1156, § 1.

## RESEARCH REFERENCES

**U. Ark. Little Rock L. Rev.** Survey of Assembly, Transportation, 28 U. Ark. Little Rock L. Rev. 397.

## CASE NOTES

### **Liability Not Shown.**

Owner of vessel held not liable for wrongful death where passenger drowned

while swimming. *Williams v. Ingram*, 320 Ark. 615, 899 S.W.2d 454 (1995).

## **27-101-202. Restrictions on manner of operation.**

No person:

(1) Shall operate any motorboat or vessel or manipulate any water skis, aquaplane, personal watercraft, or similar device in a reckless or negligent manner that endangers the life, limb or property of any person, including but not limited to, weaving through congested vessel traffic, operating within one hundred feet (100') of a towboat that is underway, jumping the wake of another vessel too close to such other vessel, or when visibility around such other vessel is obstructed and swerving at the last possible moment to avoid collision shall constitute reckless operation of a vessel;

(2) Shall operate a motorboat on the waters of this state at a rate of speed that creates a hazardous wash or wake upon approaching or

passing vessels including, but not limited to a wake that causes other vessels to take on water or a wake sufficient to toss occupants of other vessels about in a manner to cause injury or the risk of injury;

(3) Shall operate a motorboat upon the waters of this state within one hundred feet (100') of a designated recreation area, dock, pier, raft, float, anchored boat, dam, intake structure, or other obstruction at a speed exceeding five miles per hour (5 m.p.h.) unless a contrary speed limit shall have been established in the designated area. However, in no case shall any motor boat be driven in a manner or at a speed that exceeds the safe and reasonable limits under the existing circumstances;

(4) Shall operate or manipulate any vessel, tow rope, or other device by which the direction or location of water skis, an aquaplane, or similar device may be affected or controlled in a way that causes the water skis, aquaplane, or similar device, or any person thereon, to collide with or strike against any object or persons;

(5) Shall operate a vessel on any waters of this state for towing a person or persons on water skis, or an aquaplane, personal watercraft, or similar device, unless there is in the vessel a person twelve (12) years of age or older in addition to the operator in a position to observe the progress of the person or persons being towed. However, if the towing boat is equipped with a wide-angle convex marine rear-view mirror in a position to observe the skiers being towed, the requirement in this subdivision (5) shall not apply;

(6) Shall operate a vessel on any waters of this state towing a person on water skis, or an aquaplane or similar device, nor shall any person engage in water skiing, aquaplaning, or similar activity at any time between the hours from one-half ( $\frac{1}{2}$ ) hour after sunset to one-half ( $\frac{1}{2}$ ) hour before sunrise. However, the provisions of this subdivision (6) do not apply to night water skiing or aquaplaning on controlled areas designated for those purposes where adequate lighting is provided;

(7) Shall operate any motorboat or vessel or manipulate any water skis, aquaplane, or similar device while intoxicated or under the influence of any narcotic drug, barbiturate, or marijuana or while under any physical or mental disability so as to be incapable of operating the motorboat or vessel safely under the prevailing circumstances;

(8) Shall load any vessel used on the waters of this state with passengers or cargo beyond its safe carrying capacity, as indicated on the manufacturer's capacity plate, or power any vessel with an outboard motor which exceeds the maximum horsepower rating specified by the manufacturer. In addition, no person shall load a boat without a capacity plate in a manner that is unsafe or that results in the sinking or capsizing of the boat;

(9) If operating a motorboat of twenty-six feet (26') or less in length, shall allow any person to ride or sit on the gunwales or on the decking over the bow of the vessel while underway unless the vessel is equipped with adequate guards or railing to prevent passengers from being lost overboard. However, this restriction shall not apply to persons occupy-



ing the gunwales or the decking over the bow for necessary purposes such as mooring or casting off;

(10) If owning or having control of a motorboat of ten horsepower (10 HP) or more, shall permit a person under twelve (12) years of age to operate the motorboat of ten horsepower (10 HP) or more except under the direct visible and audible supervision of a parent, guardian, or other person over seventeen (17) years of age;

(11) Shall operate any vessel or manipulate any water skis, aquaplane, personal watercraft, or similar device in a grossly negligent manner that results in serious injury or death to any person; or

(12) Shall operate a vessel upon the waters of this state in a negligent manner, including but not limited to:

(A) Inattentive operation;

(B) Failure to keep a proper lookout;

(C) Failure to observe the inland navigation rules of the road, as implemented by the United States Coast Guard; or

(D) Operating in a manner which results in a collision with another vessel or object.

**History.** Acts 1959, No. 453, §§ 9, 12, §§ 21-229, 21-232, 21-237; Acts 1987, No. 17; 1961, No. 423, §§ 3, 4; 1961, No. 425, 122, § 3; 1995, No. 517, §§ 4-7; 1995, No. § 1; 1965, No. 408, §§ 2, 3; A.S.A. 1947, 1077, § 1.

## CASE NOTES

### ANALYSIS

Intoxication.

Lookouts.

#### Intoxication.

Evidence held sufficient to support conviction for driving boat while intoxicated. *Sparks v. State*, 25 Ark. App. 190, 756 S.W.2d 911 (1988).

Although this section provides no person shall operate any motorboat while intoxicated, trial court did not abuse its discretion in excluding testimony regarding beer cans found in the water; there was no evidence that boat operator was intoxicated, and its prejudicial effect outweighed any probative value. *Wade v. Grace*, 321 Ark. 482, 902 S.W.2d 785 (1995).

Trial court did not err in denying defendant's motion to suppress evidence an officer seized after he stopped defendant's

boat because the stop of was valid since the actions of defendant's passenger gave the officer probable cause to believe that a violation of subdivision (9) of this section had occurred; there was no indication from the record that the stop was prompted by anything other than the perceived violation by the boat's passenger, and because the stop of defendant's boat was valid, it was then permissible for the officer to investigate further the indications of intoxication exhibited by defendant. *Brewer v. State*, 2010 Ark. App. 275, — S.W.3d — (2010).

#### Lookouts.

Congress has not so preempted the field of navigation in navigable waters that its failure to enact a law requiring an additional person for a lookout prohibits the state from so providing. *Parker v. Price*, 241 Ark. 940, 411 S.W.2d 12 (1967).

**Cited:** *Kubik v. Igleheart*, 280 Ark. 310, 657 S.W.2d 545 (1983).



**27-101-203. Equipment requirements.**

(a)(1) Every vessel shall have aboard:

(A) One (1) type I, II, III, or V, if used according to its approved conditions, personal flotation device which is United States Coast Guard-approved, in good and serviceable condition, and of proper size for each person on board;

(B) If carrying or using any inflammable or toxic fluid in any enclosure for any purpose, and if not an entirely open motorboat, an efficient natural or mechanical ventilation system which shall be capable of removing resulting gases prior to and during the time the motorboat is occupied by any person;

(C) Additional equipment designed to promote the safety of navigation and of persons that the Arkansas State Game and Fish Commission may find to be appropriate and for which it has provided in its rules and regulations. However, before making those rules and regulations, or changes or additions thereto, the Arkansas State Game and Fish Commission shall hold public hearings, after reasonable notice thereof, of any proposed rule or regulation to be adopted; and

(D) In addition, every vessel sixteen feet (16') and longer shall have aboard one (1) type IV throwable personal flotation device.

(2) Each person being towed in a water sport activity must wear or have securely upon his or her body a life preserver or buoyant vest of the types described in subdivision (a)(1)(A) of this section in good and serviceable condition at all times while engaging in the water sport activity.

(3) In addition, all occupants of personal watercraft must wear a personal flotation device of the types described above while aboard the vessel.

(4) Occupants of a vessel who are twelve (12) years of age or younger must wear personal flotation devices of the types described above securely fastened to their persons at all times while aboard any vessel, unless such occupants are within the enclosed area of a houseboat or cruiser, unless underway, or within the area enclosed by railings on a party barge, cruiser, or houseboat, unless underway.

(5) In addition, the requirements of subdivisions (a)(1)(A) and (D) and (a)(2)-(4) of this section shall not be applicable to organized water carnivals, water skiing exhibitions, or other organized water sports exhibitions, or to persons participating in those activities or exhibitions.

(6) When in operation during hours of darkness on waters under the jurisdiction of the United States, a motorboat's lighting shall be in accordance with the following specifications:

(A) Class A and Class 1 under twenty-six feet (26') — combination red and green light on bow, with red on the port side and green on the starboard side, and a white horizon light aft, on the stern, that is visible for three hundred sixty degrees (360°) of the compass;

(B) Class 2 and Class 3, twenty-six feet (26') to not more than sixty-five feet (65') — twenty-point white light forward, red port and green starboard side lights, and white horizon light aft; and

(C) Lights must conform to the specifications contained in the United States Coast Guard Inland Navigation Rules.

(7) When in operation during hours of darkness on state-controlled waters, a motorboat's lighting shall be sufficient to make the motorboat's presence and location known to any and all other vessels within a reasonable distance.

(b) No person shall operate or give permission for the operation of a motorboat which is not equipped as required by subsection (a) of this section or a modification thereof.

(c) The use of dry stack headers or pipes extending directly from the engine of a motorboat which does not have any type of muffler is prohibited except for motorboats competing in a sanctioned regatta or boat race and for those motorboats while on trial runs during a period not to exceed forty-eight (48) hours immediately preceding such regatta or race and for those motorboats while competing in official trials for speed records during a period not to exceed forty-eight (48) hours immediately following the regatta or race and only on the body of water where the regatta or boat race is being held.

(d) No vessel used on the waters of this state shall be equipped with a siren, except vessels used by law enforcement officers.

(e)(1)(A) No person shall operate a motorboat equipped by the manufacturer with a lanyard-type engine cutoff switch while the engine is used to propel the boat without attaching the lanyard to the operator, the operator's clothing, or if the operator is wearing a personal flotation device, to the device as appropriate for the specific vessel.

(B) However, if a motorboat equipped with a lanyard-type switch is a houseboat or a pontoon boat or is traveling less than five miles per hour (5 m.p.h.), the lanyard shall not be required to be attached to the operator, the operator's clothing, or the operator's personal flotation device.

(2) As used in this subsection, "lanyard-type engine cutoff switch" means an emergency engine or motor shut-off switch that attaches by a lanyard to the person operating the motorboat and that is constructed and installed in a manner so that when in use, the switch will immediately shut off the boat's engine or motor if the operator falls overboard or is removed from the normal operating station of the boat.

(3) This subsection does not apply to flat-bottomed boats operated on the tailwaters of a trout fishery nor to flat-bottomed boats operated for duck hunting purposes during duck season.

**History.** Acts 1959, No. 453, §§ 5, 8; Acts 1995, No. 517, §§ 9, 10; 2003, No. 1961, No. 423, §§ 2, 4; 1965, No. 408, § 1; 127, § 1; 2005, No. 1297, § 2.  
A.S.A. 1947, §§ 21-225, 21-228, 21-237;

**27-101-204. Duties of boat livery owner.**

- (a) The owner of a boat livery shall cause to be kept a record of:
- (1) The name and address of the person or persons hiring any vessel;
  - (2) The registration number of the vessel if the vessel is designed or permitted to be operated as a motorboat;
  - (3) The departure date and time;
  - (4) The expected time of return; and
  - (5) The number of persons to be on board the vessel.
- (b) The record shall be preserved for at least six (6) months.
- (c) Neither the owner of a boat livery nor his or her agent or employee shall permit a vessel owned or permitted by him or her to depart from his or her premises unless the boat livery has provided the vessel with the equipment required under § 27-101-203(a) and any rules made under that section.

**History.** Acts 1959, No. 453, § 7; A.S.A. 1947, § 21-227; Acts 1995, No. 517, § 11; 2009, No. 647, § 1.

**Amendments.** The 2009 amendment, in (a), deleted “which is designed or permitted by him or her to be operated as a motorboat” following “any vessel” in (a)(1), and substituted “of the vessel if the vessel is designed or permitted to be operated as a motorboat” for “thereof” in (a)(2); and rewrote (c), which read: “Neither the

owner of a boat livery nor his or her agent or employee shall permit any motorboat or any vessel designed or permitted by him or her to be operated as a motorboat to depart from his or her premises unless it shall have been provided, either by owner or renter, with the equipment required pursuant to § 27-101-203(a) and any rules and regulations made pursuant thereto.”

**27-101-205. Collision or accident.**

(a) It shall be the duty of the operator of a vessel involved in a collision, accident, or other casualty, so far as he or she can do so without serious danger to his or her own vessel, crew, and passengers, if any, to render to other persons affected by the collision, accident, or other casualty assistance that may be practicable and that may be necessary in order to save them from or minimize any danger caused by the collision, accident, or other casualty and also to give his or her name, address, and identification of his or her vessel in writing to any person injured and to the owner of any property damaged in the collision, accident, or other casualty.

(b) In the case of collision, accident, or other casualty involving a vessel, if the collision, accident, or other casualty results in death or injury to a person or damage to property in excess of five hundred dollars (\$500) or the disappearance of a person from a vessel under circumstances that indicate death or injury, the Arkansas State Game and Fish Commission or local sheriff's department having an established water patrol shall be immediately notified in order for an investigation to be conducted. In addition, the operator of the vessel shall submit a Department of Transportation, United States Coast Guard Form CG-3865 to the Arkansas State Game and Fish Commission Boating Safety Office within ten (10) working days.



(c) When a person operating a vessel is involved in a collision, accident, or other casualty resulting in loss of human life or when there is reason to believe death may result, or a law enforcement officer has reasonable cause to believe that the person while operating a vessel is intoxicated or under the influence of any narcotic drug, barbituate, or marijuana or while under any physical or mental disability so as to be incapable of operating the vessel safely under the prevailing circumstances, a law enforcement officer shall request and the person shall submit to a chemical test of the person's blood, breath, or urine in accordance with the provisions of § 5-76-104, even if the person is fatally injured, for the purpose of determining the alcohol or controlled substance content of his or her blood, breath, or urine.

(d) In accordance with any request duly made by an authorized official or agency of the United States, any information compiled or otherwise available to the commission pursuant to this section shall be transmitted to that official or agency of the United States.

(e) Any law enforcement agency in the State of Arkansas investigating a boating accident will forward a copy of the completed accident report to the office within thirty (30) days of the accident.

(f)(1) It shall be unlawful for any person involved in a boating accident to purposely leave the scene of the accident without complying with the requirements in subsections (a) and (b) of this section.

(2) Violation of this subsection shall be punishable with a fine of not less than two hundred fifty dollars (\$250) nor more than five hundred dollars (\$500).

(3) In the event the accident resulted in grave personal injury or death, violations of this section shall be a Class D felony and upon conviction punished accordingly.

**History.** Acts 1959, No. 453, §§ 10, 11; A.S.A. 1947, §§ 21-230, 21-231; Acts 1995, No. 517, § 12; 2009; No. 693, § 2. **Amendments.** The 2009 amendment inserted (c) and redesignated the remaining subsections accordingly.

## **27-101-206. Law enforcement vessels exempt from § 27-101-202.**

Law enforcement vessels while being used in the enforcement of this chapter shall be exempt from the provisions of § 27-101-202; however, this exemption does not relieve the operator of the responsibility to operate his or her vessel in a reasonable and prudent manner that does not endanger life, limb, or property.

**History.** Acts 1995, No. 517, § 8.

## **27-101-207. Liability insurance required.**

(a)(1)(A) It shall be unlawful for the owner of a motorboat of more than fifty horsepower (50 HP) or a personal watercraft to allow the operation of the motorboat or personal watercraft unless it is covered by a liability insurance policy which has been issued by an insurance company authorized to do business in this state.

(B) The insurance policy must provide at least fifty thousand dollars (\$50,000) of liability coverage per occurrence.

(2) This section shall not apply to:

(A) A motorboat or personal watercraft owned by the United States, a state government, or any political subdivision thereof; or

(B) A motorboat or personal watercraft registered in another state.

(b)(1)(A) Failure to present proof of liability insurance coverage when requested by a law enforcement officer creates a rebuttable presumption that the motorboat or the personal watercraft is uninsured.

(B)(i) For the purposes of this section, "proof of insurance" shall consist of a policy declaration page or other documentation which reflects the motorboat or personal watercraft coverage furnished to the insured by the insurance company which can be conveniently carried in the motorboat or personal watercraft.

(ii) Insurance companies shall not be required to provide proof of insurance which may be conveniently carried as required in subdivision (b)(1)(B)(i) of this section if the insurance coverage is provided as part of a homeowner's insurance policy.

(2) Upon a showing that liability coverage required by this section was in effect at the time of arrest, the judge may dismiss the charge imposed under this section and the penalties shall not be imposed.

(c)(1) However, if the operator of the motorboat or personal watercraft is involved in an accident on the waters of this state and the motorboat or personal watercraft was not insured as required by this section, the owner of the motorboat or personal watercraft shall be deemed guilty of a Class A misdemeanor.

(2)(A) For a first violation of subsection (a) of this section, the penalty shall be a mandatory fine of not less than fifty dollars (\$50.00) nor more than two hundred fifty dollars (\$250).

(B) For a second offense, the penalty shall be a fine of not less than two hundred fifty dollars (\$250) nor more than five hundred dollars (\$500) and the minimum fine shall be mandatory.

(C) For a third or subsequent offense, the penalty shall be a mandatory fine of not less than five hundred dollars (\$500) nor more than one thousand dollars (\$1,000) or a sentence of up to one (1) year in jail or both.

(d) All fines collected under this section shall be deposited as special revenues in the State Treasury and credited to the Boating Safety Account Fund and then distributed by the Treasurer of State to the Game Protection Fund to be used by the Arkansas State Game and Fish Commission for the purpose of establishing, maintaining, and operating a program of boater training and boater safety throughout the state.

**History.** Acts 1999, No. 468, § 1; 2001, No. 1704, § 1.

**Cross References.** Program of boater training and boater safety, § 27-101-501.



SUBCHAPTER 3 — MOTORBOAT REGISTRATION AND NUMBERING

SECTION.	SECTION.
27-101-301. Identifying number required.	27-101-307. Registration after purchase of an outboard motor.
27-101-302. Exceptions — Dealer's permit.	27-101-308. Reciprocity.
27-101-303. Establishment of system — Distribution.	27-101-309. Change of boat ownership.
27-101-304. Filing of application — Issuance of certificate.	27-101-310. Destroyed or abandoned boats.
27-101-305. Display of number.	27-101-311. Public records.
27-101-306. Numbering period — Expiration — Renewal.	27-101-312. Registration forms and certificates.

**Effective Dates.** Acts 1987 (1st Ex. Sess.), No. 46, § 3: June 19, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that confusion now exists on a large scale concerning the numbering of motorboats and non-compliance with federal law is a problem; that the clarification made by this Act is immediately needed to eliminate said confusion and any resulting harmful effects on the public peace, health, safety and welfare. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1995, No. 517, § 16: Jan. 1, 1996.  
Acts 1995, No. 517, § 22: May 1, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly that the boating safety laws of the State of Arkansas are in immediate need of revision, including, increased penalties for violation of the state's boating laws; providing capacity restrictions for loading passengers and cargo on vessels; providing penalties for negligent operation of vessels; providing restrictions for personal flotation devices; providing restrictions for vessel lighting after dark; and providing procedures for investigating boating accidents. Further, it is found that operation of vessels on the waters of the state under the current laws are creating unnecessary

dangers to the life and property of the citizens of this state, and that increasing the penalties for this dangerous conduct and providing the stated restrictions for vessel operators will reduce the number of accidents and injuries to persons and property on the waters of the state. Therefore, an emergency is hereby declared to exist, and this act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after May 1, 1995."

Acts 2003, No. 1774, § 17: Apr. 22, 2003. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the discharge of untreated sewage from vessels into waters of the State of Arkansas poses a serious threat to the public health and the environment; that such a serious threat needs to be rectified immediately; and that this act improves the state's ability to enforce laws relative to marine sanitation. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."



**27-101-301. Identifying number required.**

Every motorboat on the waters of this state shall be numbered. No person shall operate or give permission for the operation of any motorboat on the waters of this state unless:

(1) The motorboat is numbered:

(A) In accordance with this subchapter; or

(B) In accordance with applicable federal law; or

(C) In accordance with a federally approved numbering system of another state; and

(2)(A) The certificate of number awarded to the motorboat is in full force and effect; and

(B) The identifying number set forth in the certificate of number is displayed on each side of the bow of the motorboat.

**History.** Acts 1959, No. 453, § 3; A.S.A. 1947, § 21-223.

**27-101-302. Exceptions — Dealer's permit.**

A motorboat shall not be required to be numbered under this subchapter if it is:

(1) Already covered by a number in full force and effect which has been awarded to it pursuant to federal law or a federally approved numbering system of another state, provided that the boat shall not have been within this state for a period in excess of ninety (90) consecutive days;

(2) A motorboat from a country other than the United States temporarily using the waters of this state;

(3) A motorboat whose owner is the United States, a state, or a subdivision thereof;

(4) A ship's lifeboat;

(5) A motorboat used, for demonstration purposes or testing purposes only, by a recognized motorboat dealer or manufacturer or agent thereof to promote the sale or development of the motorboat. All motorboat dealers or manufacturers wishing to obtain the benefits of this subdivision (5) shall obtain a permit from the Revenue Division of the Department of Finance and Administration to operate as a motorboat dealer or manufacturer and for each annual license period shall pay a fee of two dollars (\$2.00) for the permit. The division may issue, subject to the rules and regulations of the Arkansas State Game and Fish Commission, to a motorboat dealer or manufacturer an identifying certificate of number and require the attachment or display of the number on both sides of the bow of any motorboat used for demonstration or testing purposes while the motorboat is being operated for demonstration or testing purposes on the waters of this state. This subdivision (5) does not apply to vessels being used as rental boats; and

(6) A newly purchased motorboat may be operated for a period not to exceed twenty (20) working days from the date of purchase, provided that the owner or operator of the motorboat has aboard the vessel the

bill of sale or acceptable proof of purchase indicating the date of purchase, the name and address of the owner, and description and hull identification number of the vessel.

**History.** Acts 1959, No. 453, § 6; 1963, No. 140, §§ 1, 2; A.S.A. 1947, § 21-226; Acts 1995, No. 517, § 13.

**Cross References.** Licenses and permits, removal of disqualification for criminal offenses, § 17-1-103.

### **27-101-303. Establishment of system — Distribution.**

(a) The Arkansas State Game and Fish Commission shall establish a system of identification numbering for all motorboats used in this state pursuant to this subchapter.

(b) In the event that an agency of the United States Government shall have in force an overall system of identification numbering for motorboats within the United States, the numbering system employed pursuant to this subchapter by the commission shall be in conformity therewith.

(c) The commission shall assign to each county in this state a block of identification numbers for motorboats registered in each county.

(d) The identification numbers shall be assigned to each county in the state, and it shall be the duty of the Director of the Department of Finance and Administration to issue the identification numbers to the owners of motorboats in accordance with the provisions of subchapters 1-3 of this chapter.

**History.** Acts 1959, No. 453, § 4; 1963, No. 140, §§ 1, 2; A.S.A. 1947, § 21-224; Acts 1987, No. 122, § 2.

**Publisher's Notes.** Acts 1965, No. 442, §§ 1, 2, transferred the duties of county clerks with respect to issuance and renewal of identification numbers for motor-

boats to the various county offices of the State Revenue Department, now the Revenue Division of the Department of Finance and Administration.

Acts 1965, No. 442, § 1 was repealed by Acts 1987, No. 122, § 8.

### **27-101-304. Filing of application — Issuance of certificate.**

(a) The owner of each motorboat for which numbering is required by this state shall file an application for a number within thirty (30) calendar days after the date of purchase with the Director of the Department of Finance and Administration on forms approved by the Arkansas State Game and Fish Commission.

(b) The application shall be signed by the owner of the motorboat and shall be accompanied by a fee as provided in § 27-101-306 and by proof that the motorboat, if it is equipped with more than fifty horsepower (50 HP), or personal watercraft is covered by a liability insurance policy issued by an insurance company authorized to do business in this state.

(c) Upon receipt of the application in approved form, accompanied by proof that the motorboat has been duly assessed or listed for assessment and, if it is equipped with more than fifty horsepower (50 HP) or is personal watercraft, is covered by a liability insurance policy issued by an insurance company authorized to do business in this state, the

director shall enter the application upon the records of his or her office and issue to the applicant a certificate of number stating the number awarded to the motorboat and the name and address of the owner.

(d)(1) The certificate of number shall be issued in triplicate with the original copy to be furnished the owner of the motorboat.

(2) The duplicate shall be retained as a record by the director.

(3) The triplicate copy shall be furnished to the commission to be retained for a period of five (5) years.

(e)(1) The certificate of number shall be pocket-sized and shall be available at all times for inspection on the motorboat for which it is issued whenever the motorboat is in operation.

(2)(A) If a certificate of number is lost, mutilated, or becomes illegible, the owner of the motorboat for which the certificate was issued shall immediately apply for and may obtain a duplicate or a replacement certificate upon the applicant's furnishing information satisfactory to the Department of Finance and Administration.

(B) The application for a duplicate or replacement certificate to replace the original certificate of number shall be accompanied by a fee of one dollar (\$1.00).

(f) In the event that an agency of the United States Government shall have in force in the United States an overall system of identification numbering for boats covered by this chapter, then the numbering system required by this subchapter and the commission shall be in conformity therewith.

**History.** Acts 1959, No. 453, § 4; 1963, No. 46, § 1; 1995, No. 517, § 14; 1999, No. 140, § 1; A.S.A. 1947, § 21-224; Acts 1987, No. 122, § 2; 1987 (1st Ex. Sess.), No. 468, § 2; 2001, No. 462, § 3; 2003, No. 220, § 1.

### **27-101-305. Display of number.**

(a)(1) The owner shall procure and attach to each side of the bow of the motorboat numbers conforming to the certificate of number issued to the owner by the Director of the Department of Finance and Administration.

(2) The numbers to be procured and attached shall be at least three inches (3") in height and of block character, and shall be attached to the forward half of each side of the vessel and clearly visible, pursuant to federal law, and attached in such a manner and position on the boat as may be prescribed by the rules and regulations of the Arkansas State Game and Fish Commission in order that they may be clearly visible.

(b) The numbers shall be maintained in legible condition.

(c) No number other than the number awarded to a motorboat or granted reciprocity provided for in § 27-101-302(1) shall be painted, attached, or otherwise displayed on either side of the bow of the motorboat.

**History.** Acts 1959, No. 453, § 4; 1963, 1987, No. 122, § 2; 1987 (1st Ex. Sess.), No. 140, § 1; A.S.A. 1947, § 21-224; Acts No. 46, § 1.



**27-101-306. Numbering period — Expiration — Renewal.**

- (a) The certificates of numbers issued pursuant to subchapters 1-3 of this chapter may be for a period of three (3) years.
- (b) The Director of the Department of Finance and Administration shall establish a system in a manner that the expiration dates of the various certificates of numbers will be evenly distributed throughout the year and each year thereafter to the end that boat certificates of numbers will be renewable as uniformly as practicable throughout each of the twelve (12) months of the license year in each year.
- (c) Upon request, the director shall assign to any owner of two (2) or more boats the same registration period.
- (d)(1) A fee based on the length of the motorboat as set forth in this subsection shall be charged for the issuance of a certificate of number and for each renewal of each certificate of number.
- (2) The fee to be collected for certificates shall be as follows:

<u>Fee Category</u>	<u>3 Years</u>
Vessels less than sixteen feet (16') in length .....	\$ 7.50
Vessels sixteen feet (16') to less than twenty-six feet (26') .....	15.00
Vessels twenty-six feet (26') to less than forty feet (40') .....	51.00
Vessels forty feet (40') or more .....	105.00

- (e) Notice shall be given to the Arkansas State Game and Fish Commission of each certificate of number renewed and of the transfer of any certificate of number.
- (f) Every certificate of number awarded pursuant to this subchapter shall continue in full force and effect until the expiration of each numbering period unless sooner terminated or discontinued in accordance with the provisions of this subchapter.
- (g) Certificates of number may be renewed by the owner in the same manner as is provided in this section for initially securing the certificate and upon payment of the fee as set forth in this section except that the certificate of a motorboat shall not be renewed if it is equipped with more than fifty horsepower (50 HP) or is personal watercraft unless proof is presented that it is covered by a liability insurance policy issued by an insurance company authorized to do business in this state.
- (h) Unless a certificate of number is renewed on or before the fifteenth day following the expiration thereof, it shall lapse and shall no longer be of any force and effect unless renewed in the manner prescribed in this subchapter.

**History.** Acts 1959, No. 453, § 4; 1963, 1995, No. 517, §§ 15, 16; 1999, No. 468, No. 140, § 1; 1975, No. 237, §§ 1, 2; A.S.A. § 3; 2003, No. 1774, § 9. 1947, § 21-224; Acts 1987, No. 122, § 2;

**27-101-307. Registration after purchase of an outboard motor.**

When a motorboat is licensed pursuant to this subchapter, if the owner has since the previous registration of a boat purchased an outboard motor for use on the boat, then as a condition of registering the boat, the owner shall furnish the serial number of the motor to the Revenue Division of the Department of Finance and Administration.

**History.** Acts 1973, No. 395, § 2; A.S.A. 1947, § 21-249.

**27-101-308. Reciprocity.**

(a) The owner of a motorboat already covered by a number in full force and effect which has been awarded to it pursuant to then-operative federal law or federally approved numbering system of another state shall record the number prior to operating the motorboat on the waters of this state in excess of the ninety-day reciprocity period provided for in § 27-101-302(1).

(b) The recordation shall be in the manner and pursuant to the procedure required for the award of a number under § 27-101-304, except that no additional or substitute number shall be issued.

**History.** Acts 1959, No. 453, § 4; 1963, No. 140, § 1; A.S.A. 1947, § 21-224.

**27-101-309. Change of boat ownership.**

(a) Should the ownership of a motorboat change, the new owner shall file an application with the Director of the Department of Finance and Administration for the transfer of the certificate of operation of the motorboat to the new owner within thirty (30) calendar days after the date of the ownership change.

(b) Upon receipt of the application, the director shall cancel the certificate of number issued to the former owner of the motorboat and shall assign the number to the new owner of the motorboat and shall issue a certificate of number to the new owner.

(c) The application for transfer of the certificate of number shall be accompanied by a fee of two dollars (\$2.00).

**History.** Acts 1959, No. 453, § 4; 1963, 1987, No. 122, § 2; 1995, No. 517, § 17; No. 140, § 1; A.S.A. 1947, § 21-224; Acts 2001, No. 462, § 4.

**27-101-310. Destroyed or abandoned boats.**

(a) Whenever any motorboat numbered under the provisions of this subchapter shall be destroyed or abandoned, its owner shall notify the Director of the Department of Finance and Administration within fifteen (15) days after the destruction or abandonment, and the certificate of number of the motorboat shall be terminated.

(b) The director shall notify the Arkansas State Game and Fish Commission of the termination of any certificate of number.

**History.** Acts 1959, No. 453, § 4; 1963, No. 140, § 1; A.S.A. 1947, § 21-224; Acts 1987, No. 122, § 2; 2003, No. 1774, § 10.

**27-101-311. Public records.**

All records of the Revenue Division of the Department of Finance and Administration and of the Arkansas State Game and Fish Commission made or kept pursuant to this subchapter shall be public records.

**History.** Acts 1959, No. 453, § 4; 1963, No. 140, § 1; A.S.A. 1947, § 21-224.

**27-101-312. Registration forms and certificates.**

All necessary registration certificates and other forms required by this chapter shall be furnished to the Revenue Division of the Department of Finance and Administration by the Arkansas State Game and Fish Commission.

**History.** Acts 1959, No. 453, § 4; 1963, No. 140, § 1; A.S.A. 1947, § 21-224.

**SUBCHAPTER 4 — FUNDS — MARINE SANITATION**

SECTION.

- 27-101-401 — 27-101-404. [Repealed.]
- 27-101-405. Marine Sanitation Advisory Committee.
- 27-101-406. [Repealed.]
- 27-101-407. Owners and operators of commercial boating facilities, docks, and marinas.
- 27-101-408. Marine sanitation funds.
- 27-101-409. Powers and duties of the Marine Sanitation Advisory Committee.
- 27-101-410. Cooperation with federal agencies.

SECTION.

- 27-101-411. Marine sewage discharge prohibitions — Marine sanitation device requirements.
- 27-101-412. Sewage disposal by commercial boating facilities, docks, and marinas.
- 27-101-413. Department of Health — Powers and duties.
- 27-101-414. Penalties.

**Effective Dates.** Acts 1999, No. 1101, § 13; Apr. 5, 1999. Emergency clause provided: “It is hereby found and determined by the Eighty-second General Assembly that the discharge of untreated sewage from boats into impounded waters of the State of Arkansas poses a serious threat to the public health and the environment; that such a serious threat needs to be rectified immediately; that this act improves the state’s ability to enforce laws relative to marine sanitation. Therefore, an emergency is declared to exist and this act being immediately necessary for the

preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.”  
Acts 2003, No. 1774, § 17: Apr. 22, 2003. Emergency clause provided: “It is found and determined by the General As-



sembly of the State of Arkansas that the discharge of untreated sewage from vessels into waters of the State of Arkansas poses a serious threat to the public health and the environment; that such a serious threat needs to be rectified immediately; and that this act improves the state's ability to enforce laws relative to marine sanitation. Therefore, an emergency is declared to exist and this act being immedi-

ately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

## 27-101-401 — 27-101-404. [Repealed.]

**Publisher's Notes.** These sections, concerning definitions, penalties, powers and duties of the State Board of Health, and discharge of marine sewage, were repealed by Acts 2001, No. 1608, § 1. The sections were derived from the following sources:

27-101-401. Acts 1965, No. 147, § 1; A.S.A. 1947, § 21-243; Acts 1999, No. 1101, § 1.

27-101-402. Acts 1965, No. 147, § 5; A.S.A. 1947, § 21-247; Acts 1999, No. 1101, § 2.

27-101-403. Acts 1965, No. 147, § 4; A.S.A. 1947, § 21-246; Acts 1999, No. 1101, § 3.

27-101-404. Acts 1965, No. 147, § 2; A.S.A. 1947, § 21-244; Acts 1999, No. 1101, § 4.

## 27-101-405. Marine Sanitation Advisory Committee.

(a) There is established a Marine Sanitation Advisory Committee, to consist of thirteen (13) members appointed by the Governor as follows:

- (1) Five (5) members shall be marina operators;
- (2) One (1) member shall be an operator of a marine repair facility;
- (3) One (1) member shall be nominated by the Director of the Department of Health;
- (4) One (1) member shall be nominated by the Director of the Arkansas Department of Environmental Quality;
- (5) One (1) member shall be nominated by the Executive Secretary of the Arkansas State Game and Fish Commission;
- (6) Three (3) members shall be boat owners; and
- (7) One (1) member shall be the Captain of Division 15 of the United States Coast Guard Auxiliary or his or her designee.

(b)(1) The three (3) members appointed pursuant to subdivisions (a)(3)-(5) of this section shall serve at the pleasure of the director of each respective agency, and the member appointed pursuant to subdivision (a)(7) of this section shall serve as long as the person remains Captain of Division 15, or if the designee of the captain, the designee will serve as long as the person designating him or her is Captain of Division 15.

(2) Of the initial members appointed under subdivisions (a)(1), (a)(2), and (a)(6) of this section, three (3) shall be appointed for one-year terms, three (3) for two-year terms, and three (3) for three-year terms.

(3) Members shall serve three-year terms except that persons appointed to fill vacancies resulting in an unexpired term shall serve for the remainder of that unexpired term.

(c) Upon recommendation of the advisory committee made after notice and hearing, the Governor may remove any member of the advisory committee for incompetence, neglect of duty, or malfeasance in office.

(d) Any vacancy on the advisory committee shall be filled by the Governor.

(e)(1) The Governor shall call the first advisory committee meeting.

(2)(A) The advisory committee shall elect annually from its membership a chair, a vice chair, and a secretary.

(B) The chair shall not serve more than two (2) consecutive terms as chair.

(3) The advisory committee shall meet as frequently as it deems necessary at such times and places as the advisory committee designates. Additional meetings may be held upon the call of the chair or upon written request of five (5) members of the advisory committee.

(f) Seven (7) members of the advisory committee shall constitute a quorum.

(g) The members of the advisory committee shall not be entitled to compensation for their services.

**History.** Acts 1965, No. 147, § 3; A.S.A. 1947, § 21-245; Acts 1999, No. 1101, § 5; 2001, No. 1608, § 2.

## **27-101-406. [Repealed.]**

**Publisher's Notes.** This section, concerning permits and fees, was repealed by Acts 2003, No. 1774, § 12. The section was derived from Acts 1999, No. 1101, § 7.

## **27-101-407. Owners and operators of commercial boating facilities, docks, and marinas.**

(a) Owners and operators of commercial boating facilities, docks, and marinas shall cooperate with all applicable state and federal agencies and the Marine Sanitation Advisory Committee to ensure that the disposal of marine sewage is consistent with state and federal law.

(b) When accepting new boat arrivals, owners and operators of commercial boating facilities, docks, and marinas shall inform vessel owners and operators of the requirements of state and federal law regarding the proper disposal of marine sewage.

**History.** Acts 1999, No. 1101, § 8; 2001, No. 1608, § 3; 2003, No. 1774, § 13.

**27-101-408. Marine sanitation funds.**

(a) All fees and fines levied and collected under the provisions of this subchapter are declared to be special revenues and shall be deposited in the State Treasury to be credited to the Marine Sanitation Fund to be used only for the administration of this subchapter.

(b) Subject to rules and regulations that may be implemented by the Chief Fiscal Officer of the State, the disbursing officer for the Department of Health is authorized to transfer all unexpended funds relative to marine toilets and marine sanitation systems that pertain to fees or fines collected, as certified by the Chief Fiscal Officer of the State, to be carried forward and made available for expenditures for the same purpose for any following fiscal year.

**History.** Acts 1999, No. 1101, § 9;  
2003, No. 1774, § 14.

**27-101-409. Powers and duties of the Marine Sanitation Advisory Committee.**

The Marine Sanitation Advisory Committee may, subject to the availability of funding:

(a) Review all regulations relating to marine toilets, marine sanitation systems, and disposal of marine sewage from boats as necessary to inform marina operators and boat owners of all requirements of state and federal law;

(b) Establish a marine sanitation minigrant program for the purpose of providing grants to marinas to purchase additional marine equipment to assist with the proper disposal of marine sewage; and

(c) Encourage research in regard to technological developments in the discharge of marine sewage.

**History.** Acts 1999, No. 1101, § 6;  
2001, No. 1608, § 4.

**27-101-410. Cooperation with federal agencies.**

The Department of Health, the Arkansas Department of Environmental Quality, and the Arkansas State Game and Fish Commission shall pursue cooperative agreements with all appropriate federal agencies to ensure the proper disposal of marine sewage in Arkansas.

**History.** Acts 2001, No. 1608, § 5.

**27-101-411. Marine sewage discharge prohibitions — Marine sanitation device requirements.**

(a)(1) Except to the extent permitted by federal law and in order to protect the health and safety of persons using the waters of this state, it is unlawful for any person to operate or use a vessel capable of



discharging untreated sewage from a vessel into the waters of this state.

(2) Raw sewage shall not be discharged from any vessel into waters of this state.

(b)(1) On waters of this state, vessels that have toilet facilities permanently installed shall be equipped with a United States Coast Guard-certified Marine Sanitation Device designed to receive, retain, treat, or discharge sewage in accordance with applicable federal requirements.

(2) This section applies only to vessels equipped with permanently installed toilet facilities and does not require the installation of this type of facility in vessels not already so equipped.

(3) The use of portable toilets that can be emptied ashore in regular sewage treatment systems is entirely within the spirit and letter of this section and is encouraged.

(c)(1) All waste from Type III Marine Sanitation Devices shall be disposed in approved sewage pumpout facilities.

(2) All waste from portable toilets shall be disposed in approved waste reception or sewage pumpout facilities.

(d)(1) Except to the extent permitted by federal law, it shall be unlawful for any person to discharge any treated or untreated sewage into any waters of this state lawfully designated as “no discharge”.

(2) A “no discharge” designation shall be based on the criteria established by the United States Environmental Protection Agency for determining no discharge waters regarding marine sanitation devices and shall include federal impoundments owned or managed by the United States Army Corps of Engineers.

(3) Any such discharge of sewage from a vessel shall be prima facie evidence that the discharge was done by the operator, or owner if the operator cannot be determined, of the vessel.

(4) A “no discharge” Type III Marine Sanitation Device or a Type I or II Marine Sanitation Device secured against discharge is required in vessels operated on no discharge waters.

(5) A vessel equipped with a flow-through Type I or II Marine Sanitation Device that has been secured by a locked shut-off valve, broken line, or blanked-off hull opening to prevent overboard discharge shall be considered equipped with a “no discharge” type Marine Sanitation Device.

**History.** Acts 2003, No. 1774, § 15.

**27-101-412. Sewage disposal by commercial boating facilities, docks, and marinas.**

(a) For purposes of this section, “sewage pumpout facility” means equipment designed to receive the discharge of sewage from a marine sanitation device and allow the disposal of the sewage in a manner that prevents the sewage from entering the waters of this state.

(b) By July 1, 2004, any person owning or operating a commercial boating facility, dock, or marina that stores or houses vessels equipped with toilet facilities and marine sanitation devices shall provide access to sewage pumpout facilities.

(c) To provide access to sewage pumpout facilities, a commercial boating facility, dock, or marina owner or operator may, as an illustration of and not as a limit on the options available to the owner or operator:

- (1) Build and operate pumpout facilities;
- (2) Contract with another boating facility, dock, or marina with pumpout facilities if the contracting boating facility, dock, or marina is not more than eight (8) water miles away and is accessible in a way that does not require vessels to be trailered; and
- (3) Contract with a person licensed by the State of Arkansas to provide pumpout facility service if the service is available during normal business hours, including holidays, and if the service can be provided within a reasonable time upon request by a vessel owner or operator.

**History.** Acts 2003, No. 1774, § 15.

### **27-101-413. Department of Health — Powers and duties.**

The Department of Health shall:

- (1) Administer and enforce all laws and regulations to the extent permitted by federal law and in accordance with applicable regulations that are adopted by the United States Coast Guard and the United States Environmental Protection Agency and that relate to marine toilet facilities, marine sanitation devices, and unlawful discharge of marine sewage from vessels into waters of this state;
- (2) Enter at all reasonable times in or upon any vessel for the purpose of inspecting and investigating conditions relating to marine toilet facilities, marine sanitation devices, and unlawful discharge of marine sewage from vessels into waters of this state;
- (3) Adopt regulations that are consistent with applicable federal law after consultation with the Marine Sanitation Advisory Committee and that are deemed necessary to carry out the provisions of this subchapter;
- (4) Bring any appropriate action in court in the name of the State of Arkansas that is necessary to carry out the provisions of this subchapter; and
- (5) Make, issue, modify, and revoke orders prohibiting or abating the unlawful discharge of marine sewage from vessels into waters of this state.

**History.** Acts 2003, No. 1774, § 15.

**27-101-414. Penalties.**

(a) Any person who violates any provision of this subchapter or any regulation promulgated under this subchapter shall be guilty of a misdemeanor and subject to a fine of not less than one hundred dollars (\$100) and not more than one thousand dollars (\$1,000) or imprisonment not to exceed three (3) months, or both.

(b)(1) Any person who violates any provision of this subchapter or any regulation promulgated under this subchapter may be assessed an administrative civil penalty not to exceed one thousand dollars (\$1,000) per violation.

(2) The owner and operator of any vessel shall be jointly and severally liable for the civil penalty imposed under this section.

(c) All fines and penalties imposed and collected under this section shall be deposited in the Marine Sanitation Fund and shall be used to:

- (1) Implement, administer, and enforce this subchapter;
- (2) Construct, renovate, or operate sewage pumpout and waste reception facilities; and

(3) Conduct education programs to inform vessel owners and operators about the problem of human body waste discharges from vessels and inform them of the locations of sewage pumpout and waste reception facilities.

**History.** Acts 2003, No. 1774, § 15.

**SUBCHAPTER 5 — BOATER SAFETY**

SECTION.	Boater education certificate.
27-101-501. Program of boater training and boater safety —	

**A.C.R.C. Notes.** References to “this chapter” in Subchapters 1-4 may not apply to this subchapter which was enacted subsequently.

**27-101-501. Program of boater training and boater safety — Boater education certificate.**

- (a) The General Assembly finds and determines that:
- (1) The regulation of boating and boaters in the state is the primary responsibility of the Arkansas State Game and Fish Commission under Arkansas Constitution, Amendment 35;
  - (2) Most boating accidents in the state are due primarily to the lack of training or the improper training of boaters;
  - (3) The establishment of a boater training and safety program in this state would greatly improve and facilitate boater safety in this state; and



(4) It is the purpose and intent of this section to authorize the commission to establish and operate a boater safety and training program in this state.

(b)(1) The commission is authorized and encouraged to establish, maintain, and operate a program of boater training and boater safety in this state.

(2) Beginning January 1, 2010, the program shall include without limitation:

(A)(i) A course of instruction designed to teach the safe and proper handling of motorboats, personal watercraft, and any other related matters as shall be deemed appropriate by the commission.

(ii) With regard to personal watercraft, the course of instruction shall include electronic simulation of personal watercraft operation and actual hands-on familiarization with the personal watercraft; and

(B)(i) A written examination that shows the applicant's ability to have common knowledge to exercise ordinary and reasonable control in the operation of a motorboat and a personal watercraft.

(ii) The examination shall be administered in person at a time and place designated by the commission.

(3) The course of instruction may be offered in cooperation with schools, private clubs, and organizations and may be offered by the commission in areas where requested and where other sponsorship is unavailable.

(4) The commission shall also prepare and disseminate information on water safety to the public, including informational pamphlets, which shall be made available at popular tourist locations.

(c) The commission may adopt and enforce rules and regulations it shall deem appropriate and necessary to properly carry out the purposes and intent of this section.

(d)(1) In order to operate a motorboat or a personal watercraft in Arkansas, all Arkansas residents born on or after January 1, 1986, and of legal age to operate a motorboat or personal watercraft must have successfully completed:

(A) A commission-approved safe boating course and examination under subdivision (b)(2) of this section to obtain a permanent boater education certificate; or

(B) A questionnaire to obtain a temporary boater education certificate under subsection (d)(4) of this section.

(2) The commission shall issue boating education certificates and furnish a copy of the state laws pertaining to the operation of a motorboat or personal watercraft or informational material based on these laws to persons successfully completing an approved safe boating course and examination.

(3) Valid boating education certificates issued by other states to nonresidents shall be honored by this state if the boating education course is approved by the National Association of State Boating Law Administrators.

(4) Prior to operating a motorboat or a personal watercraft on the waters of this state, a nonresident or resident born on or after January 1, 1986, and of legal age to operate a motorboat or a personal watercraft may obtain a temporary boater education certificate, which shall be valid for thirty (30) days, by completing a questionnaire developed by the commission.

(5)(A) The application of any person under eighteen (18) years of age for a permanent or temporary boater education certificate shall be signed and verified before a person authorized to administer oaths by either the custodial parent or guardian of the applicant.

(B) For purposes of this section, duly authorized agents of the commission shall be authorized to administer oaths without charge.

**History.** Acts 1997, No. 824, § 1; 2009, No. 693, § 2.

**Amendments.** The 2009 amendment subdivided (b), inserted “Beginning January 1, 2010” in the introductory language of (b)(2), inserted (b)(2)(A)(ii) and (b)(2)(B), and substituted “motorboats, personal watercraft” for “boats” in (b)(2)(A)(i); subdivided (d)(1), inserted “or personal watercraft” or similar language in (d)(1) and (d)(4), inserted “and exami-

nation under subdivision (b)(2) of this section to obtain a permanent boater education certificate” in (d)(1)(A), substituted “a motorboat or personal watercraft” for “boats” and inserted “and examination” in (d)(2), and inserted (d)(5); and made related and minor stylistic changes.

**Cross References.** Liability insurance for certain motorboats and personal watercraft, § 27-101-207.

SUBCHAPTER 6 — PERSONAL WATERCRAFT

- SECTION.  
27-101-601. Definitions.  
27-101-602. Regulation of personal watercraft.  
27-101-603. Towing water skiers.  
27-101-604. Regulation of personal watercraft liveries.

- SECTION.  
27-101-605. Exemptions.  
27-101-606. Penalties.  
27-101-607. Scope.

**A.C.R.C. Notes.** References to “this chapter” in Subchapters 1-4 may not ap-

ply to this subchapter which was enacted subsequently.

27-101-601. Definitions.

As used in this subchapter, “personal watercraft” means a vessel less than sixteen feet (16') in length propelled by a water jet pump or other machinery as its primary source of motor propulsion and which is designed to be operated by a person sitting, standing, or kneeling thereon rather than being operated by a person sitting or standing inside the vessel.

**History.** Acts 1999, No. 756, § 1.

**RESEARCH REFERENCES**

**ALR.** Validity, construction, and application of state statutes and local ordinances governing personal watercraft use. 118 A.L.R. 5th 347.

**27-101-602. Regulation of personal watercraft.**

(a)(1) No person shall operate a personal watercraft unless each person aboard is wearing a type I, type II, type III, or type V personal flotation device approved by the United States Coast Guard.

(2) Provided, no person aboard a personal watercraft shall use an inflatable personal flotation device to meet the personal flotation device requirement of this subsection.

(b) A person operating a personal watercraft equipped by the manufacturer with a lanyard-type engine cutoff switch shall attach such lanyard to his or her person, clothing, or personal flotation device as appropriate for the specific vessel.

(c) No person shall operate a personal watercraft at any time between thirty (30) minutes after sunset and thirty (30) minutes before sunrise.

(d) No person under sixteen (16) years of age shall operate a personal watercraft on the waters of this state, except:

(1) A person at least twelve (12) years of age may operate a personal watercraft if a person at least eighteen (18) years of age is aboard the vessel who:

(A) Was born before January 1, 1986, or has a valid boater education certificate; and

(B) Is in a position to take immediate control of the vessel; or

(2) A person under twelve (12) years of age may operate a personal watercraft if a person at least twenty-one (21) years of age is aboard the vessel who:

(A) Was born before January 1, 1986, or has a valid boater education certificate; and

(B) Is in a position to take immediate control of the vessel.

(e)(1) Every personal watercraft shall at all times be operated in a reasonable and prudent manner. No person shall operate a personal watercraft in an unsafe or reckless manner.

(2) Unsafe personal watercraft operation shall include but not be limited to the following:

(A) Becoming airborne or completely leaving the water while crossing the wake of another vessel within one hundred feet (100') of the vessel creating the wake;

(B) Weaving through congested traffic;

(C) Operating at greater than slow no-wake speed within one hundred feet (100') of an anchored or moored vessel, shoreline, dock, pier, swim float, marked swim area, swimmer, surfer, person engaged in angling, or any manually propelled vessel; and

(D)(i) Operating contrary to the rules of the road or following too close to another vessel, including another personal watercraft.



(ii) For the purposes of this section, following too close shall be construed as proceeding in the same direction and operating at a speed in excess of ten miles per hour (10 m.p.h.) when approaching within one hundred feet (100') to the rear or fifty feet (50') to the side of another motorboat or sailboat which is underway unless such vessel is operating in a channel too narrow to keep the required distance, in which case a personal watercraft may be operated at a speed which is reasonable and prudent for the existing conditions.

(f) No person who owns a personal watercraft or who has charge over or control of a personal watercraft shall authorize or knowingly permit the personal watercraft to be operated in violation of this subchapter.

**History.** Acts 1999, No. 756, § 2; 2009, No. 693, § 3.

**Amendments.** The 2009 amendment, in (d), substituted "sixteen (16)" for "four-

teen (14)" in the introductory language, inserted (d)(1)(A), (d)(1)(B), and (d)(2)(A), redesignated the remaining subdivisions accordingly, and made related changes.

### RESEARCH REFERENCES

**ALR.** Validity, construction, and application of state statutes and local ordi-

nances governing personal watercraft use. 118 A.L.R. 5th 347.

### 27-101-603. Towing water skiers.

(a) No person shall operate a personal watercraft towing another person on water skis or other device unless the personal watercraft has on board, in addition to the operator, an observer who shall monitor the progress of the person being towed.

(b) No person shall operate a personal watercraft towing another person on water skis or other device unless the total number of persons operating, observing, and being towed does not exceed the specified number of passengers as identified by the manufacturer as the maximum safe load for the vessel.

**History.** Acts 1999, No. 756, § 4.

### RESEARCH REFERENCES

**ALR.** Validity, construction, and application of state statutes and local ordi-

nances governing personal watercraft use. 118 A.L.R. 5th 347.

### 27-101-604. Regulation of personal watercraft liveries.

(a) A personal watercraft livery shall carry liability insurance in an amount of not less than five hundred thousand dollars (\$500,000).

(b) Operators of rental personal watercraft shall be required by livery operators to view a personal watercraft instructional video approved by the Arkansas State Game and Fish Commission Boating Safety Office.

(c) A personal watercraft livery shall provide for the operator of rental personal watercraft in print prior to rental the boating regula-

tions peculiar to the area of rental, including, but not limited to, no-entry zones, no-wake zones, channel routes and water hazards, and tidal flow, where applicable.

(d) A personal watercraft livery shall provide the operators of rental personal watercraft with all equipment required under state law.

(e) A personal watercraft livery may not enter into a lease for rental agreement for a personal watercraft with any person under eighteen (18) years of age.

**History.** Acts 1999, No. 756, § 5.

**RESEARCH REFERENCES**

**ALR.** Validity, construction, and application of state statutes and local ordinances governing personal watercraft use. 118 A.L.R. 5th 347.

**27-101-605. Exemptions.**

(a) The provisions of § 27-101-602 shall not apply to a person participating in an officially sanctioned regatta, race, marine parade, tournament, or exhibition.

(b) Law enforcement officers and emergency response personnel engaged in the performance of their duties shall be exempt from the provisions of this subchapter.

(c) The provisions of § 27-101-604(d) shall not apply to the State of Arkansas, including state agencies, boards, and commissions, nor its political subdivisions such as counties and municipalities. However, the remaining provisions of this subchapter, including § 27-101-604(a)-(c), shall apply.

**History.** Acts 1999, No. 756, § 3.

**RESEARCH REFERENCES**

**ALR.** Validity, construction, and application of state statutes and local ordinances governing personal watercraft use. 118 A.L.R. 5th 347.

**27-101-606. Penalties.**

Each violation of this subchapter shall be punishable by a fine not less than fifty dollars (\$50.00) nor more than one hundred dollars (\$100), except that the fine for violating § 27-101-602(e) shall be no less than one hundred dollars (\$100) nor more than two hundred fifty dollars (\$250).

**History.** Acts 1999, No. 756, § 8.

**RESEARCH REFERENCES**

**ALR.** Validity, construction, and application of state statutes and local ordinances governing personal watercraft use. 118 A.L.R. 5th 347.

**27-101-607. Scope.**

The provisions of this subchapter shall be supplemental and in addition to any other laws and regulations relating to boats or other watercraft.

**History.** Acts 1999, No. 756, § 6.

**RESEARCH REFERENCES**

**ALR.** Validity, construction, and application of state statutes and local ordinances governing personal watercraft use. 118 A.L.R. 5th 347.

**SUBCHAPTER 7 — BOAT IDENTIFICATION ACT**

SECTION.	SECTION.
27-101-701. Title.	27-101-704. Altering or changing boating identification numbers.
27-101-702. Definitions.	27-101-705. Mutilation of boating identification numbers.
27-101-703. Boating equipment without boating identification numbers.	

**A.C.R.C. Notes.** References to “this chapter” in subchapters 1-4 may not apply to this subchapter which was enacted subsequently.

**27-101-701. Title.**

This subchapter shall be known and may be cited as the “Boat Identification Act”.

**History.** Acts 2005, No. 1457, § 1.

**27-101-702. Definitions.**

- As used in this subchapter:
- (1)(A) “Boat identification number” means a number assigned to boating equipment by the manufacturer of the boating equipment or the Boating Law Administrator of the Arkansas State Game and Fish Commission.
  - (B) “Boat identification number” shall include the following:
    - (i) A hull identification number;
    - (ii) An outboard motor serial number;
    - (iii) Any other number placed on a piece of boating equipment under assignment from the office; or
    - (iv) Any other distinguishing number or mark assigned to a piece of boating equipment by the manufacturer for identification purposes; and
  - (2) “Boating equipment” means:



- (A) A motorboat, personal watercraft, or other vessel as defined under § 27-101-103; or
- (B) An outboard motor.

**History.** Acts 2005, No. 1457, § 1.

**27-101-703. Boating equipment without boating identification numbers.**

(a) It is unlawful for a person to knowingly buy, receive, dispose of, sell, offer for sale, or have in his or her possession boating equipment on which the boat identification number has been removed, defaced, covered, altered, or destroyed for the purpose of concealing or misrepresenting the identity of the boating equipment.

(b)(1) A person who pleads guilty or nolo contendere to or is found guilty of a violation under subsection (a) of this section is guilty of a Class A misdemeanor.

(2) A person who pleads guilty or nolo contendere to or is found guilty of a second or subsequent offense under this section is guilty of a Class D felony.

**History.** Acts 2005, No. 1457, § 1.

**27-101-704. Altering or changing boating identification numbers.**

(a) It is unlawful for a person with fraudulent intent to deface, destroy, or alter the boating identification number or to place a boating identification number on boating equipment that was not assigned by the manufacturer or the Boating Law Administrator of the Arkansas State Game and Fish Commission.

(b) A person who pleads guilty or nolo contendere to or is found guilty of a violation under subsection (a) of this section is guilty of a Class C felony.

**History.** Acts 2005, No. 1457, § 1.

**27-101-705. Mutilation of boating identification numbers.**

(a) It shall be unlawful for a person or other entity to have in his, her, or its possession boating equipment with a boating identification number that has been mutilated to the extent that it cannot be read.

(b) If a piece of boating equipment has been stolen and recovered with a mutilated boating identification number, then a court of competent jurisdiction shall:

(1) Authorize the rightful owner of the boating equipment to continue the use of the equipment; and

(2) Direct the owner of the boating equipment to have the original boating identification number replaced or restenciled on the piece of boating equipment.

(c) A person who pleads guilty or nolo contendere to or is found guilty of a violation under subsection (a) of this section is guilty of a Class D felony.

**History.** Acts 2005, No. 1457, § 1.

CHAPTER 102

SALVAGE FROM WATERWAYS

SECTION.	SECTION.
27-102-101. Right to take up property lost or wrecked on river.	27-102-106. Salvage of rafts.
27-102-102. Owner's right to recover.	27-102-107. Perishable property.
27-102-103. Right to salvage payment.	27-102-108. Property found afloat.
27-102-104. Affidavit by taker up.	27-102-109. Vesting of ownership in taker up.
27-102-105. Advertisement of property recovered.	27-102-110. Search warrant for lost property.

RESEARCH REFERENCES

**Am. Jur.** 68 Am. Jur. 2d, Salvage, § 1 et seq.

**Ark. L. Rev.** Lex Aquae Arkansas, 27 Ark. L. Rev. 429.

**C.J.S.** 78 C.J.S., Salvage, § 1 et seq.

27-102-101. Right to take up property lost or wrecked on river.

When any boat, vessel, raft, or other property shall be lost or wrecked and in a perishable condition upon any river in this state, or any river making a boundary of the state, any person may take up and secure it at or near the place where found.

**History.** Rev. Stat., ch. 134, § 1; C. & M. Dig., § 8733; Pope's Dig., § 11426; A.S.A. 1947, § 21-301.

CASE NOTES

<b>Possession Rights.</b> In order for the salvor of a boat to retain possession of the boat until salvage is paid, the boat must have been lost or	wrecked or in a perishable condition. Hightower v. Stillwell, 179 Ark. 256, 15 S.W.2d 326 (1929).
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27-102-102. Owner's right to recover.

When any person shall set up a claim to salvaged property and shall prove his or her title to it by competent testimony before any justice of the peace of the proper county, the taker up shall restore the property to the owner if he or she pays the taker up a premium for salvage, at the

rate of not exceeding ten percent (10%) of the value of all the property, to be adjudged by a justice of the peace of the county.

**History.** Rev. Stat., ch. 134, § 2; C. & M. Dig., § 8734; Pope's Dig., § 11427; A.S.A. 1947, § 21-302.

### **27-102-103. Right to salvage payment.**

The taker up of a boat, vessel, raft, or other property shall be entitled to retain it against the rightful owner until salvage be paid, or he or she may have and maintain a civil action against the owner for the amount of salvage due in accordance with this chapter.

**History.** Rev. Stat., ch. 134, § 3; C. & M. Dig., § 8735; Pope's Dig., § 11428; A.S.A. 1947, § 21-303.

### **27-102-104. Affidavit by taker up.**

When any salvaged property shall be taken up and secured, if it exceeds ten dollars (\$10.00) in value, the taker up shall immediately go before a justice of the peace of the county and make an affidavit that the property was wrecked or lost and was in a perishable condition, as he or she believed, and that he or she was not instrumental, directly or indirectly, in causing the property to be so wrecked, lost, or set adrift, or placed in a perishable condition. He or she shall also state on oath an exact account of the quality and quantity of the property, the time that the property was taken up, and that he or she has not secreted or disposed of, directly or indirectly, any part thereof.

**History.** Rev. Stat., ch. 134, § 4; C. & M. Dig., § 8736; Pope's Dig., § 11429; A.S.A. 1947, § 21-304.

### **27-102-105. Advertisement of property recovered.**

(a) Within twenty (20) days after making the affidavit, the taker up shall cause to be inserted in some newspaper printed in this state, for three (3) weeks successively, a correct account of the time and place when and where the property was taken up and the description and valuation thereof. He or she shall also put up three (3) advertisements to the same effect at the most public places in the neighborhood where the property may have been taken up.

(b) If the amount of the property taken up does not exceed fifty dollars (\$50.00) in value, no publication in the newspaper is necessary.

(c) Persons taking up property and failing to give notice as required by this section shall forfeit all claims to salvage.

**History.** Rev. Stat., ch. 134, §§ 5-7; C. §§ 11430-11432; A.S.A. 1947, §§ 21-305 & M. Dig., §§ 8737-8739; Pope's Dig., — 21-307.



**CASE NOTES****Notice Required.**

To be entitled to salvage, a person must give statutory notice. *Sullivan v. Wooldridge*, 107 Ark. 256, 154 S.W. 508 (1913).

**27-102-106. Salvage of rafts.**

When rafts are taken up, consisting of logs, firewood, rails, or other timber, the person taking up and securing them and complying with the requisitions of this subchapter shall, on the owner's claiming them, be entitled to salvage not exceeding twenty percent (20%) of the value thereof, to be adjudged by a justice of the peace of the county.

**History.** Rev. Stat., ch. 134, § 8; C. & M. Dig., § 8740; Pope's Dig., § 11433; A.S.A. 1947, § 21-308.

**27-102-107. Perishable property.**

(a) When any raft or boat with produce therein shall be taken up, which raft or the cargo of the boat consists of articles that are usually taken to the states of Mississippi or Louisiana for sale and the owner does not apply for or make demand of the property within twenty (20) days, then the person taking up the property may apply to a justice of the peace of the county where the property was taken up. On showing that the property so taken up is of a perishable nature and is likely to be injured or become of less value by being kept, the justice may make an order authorizing the taker up of the property to sell the property at public auction on giving notice by advertisement, as the justice may direct, or the justice may authorize the taker up to ship the property to any market where he or she may deem it most likely he or she will effect a good sale of the property.

(b) Before the sale shall be made or the property removed for shipment to another market, the taker up shall enter into bond to the State of Arkansas, with sufficient security to be approved of by the justice, in double the value of the property so taken up. This bond shall be conditioned that if the owner shall appear and establish his or her claim to the property within one (1) year from the time of taking up the property, the taker up will pay to the owner the value of the property, deducting his or her salvage or, when taken to a market, deducting his or her salvage and reasonable expenses.

(c) The bond shall be filed by the justice in the office of the clerk of the county court of the county where the property was taken up for the use of the owner.

(d) The justice shall give to the taker up a copy of the order of sale or shipment with a certificate that bond has been entered into by the person for the security of the owner. The copy of the order and certificate under the hand of the justice shall be a sufficient voucher for the taker up to authorize all acts of ownership over the property.

**History.** Rev. Stat., ch. 134, §§ 9-12; C. §§ 11434-11436; A.S.A. 1947, §§ 21-309 & M. Dig., §§ 8741-8743; Pope's Dig., — 21-312.

### **27-102-108. Property found afloat.**

When boats are wrecked or staved and property is found afloat on any watercourse in this state, and the value thereof does not exceed one hundred dollars (\$100), the taker up of the property shall be entitled to salvage not exceeding one-fourth ( $\frac{1}{4}$ ) part thereof for taking up and securing the property, to be adjudged by a justice of the peace of the county.

**History.** Rev. Stat., ch. 134, § 13; C. & M. Dig., § 8744; Pope's Dig., § 11437; A.S.A. 1947, § 21-313.

### **27-102-109. Vesting of ownership in taker up.**

If no demand shall be made within one (1) year from the taking up of any property under this chapter and the taker up has complied with the provisions of this chapter in all respects, then the property so taken up or the proceeds when sold shall vest in the taker up.

**History.** Rev. Stat., ch. 134, § 14; C. & M. Dig., § 8745; Pope's Dig., § 11438; A.S.A. 1947, § 21-314.

### **27-102-110. Search warrant for lost property.**

When any person shall make oath before any justice of the peace that he or she has lost any property by wreck or by flood, storm, or other accident, give a description of the property, and further state that he or she has reason to suspect that the property so lost is secreted in the possession or custody of any person, the justice may issue his or her warrant to the constable of the township, describing the property in the warrant, requiring the constable to search for and to take into his or her possession the property when found. If the claimant shall prove his or her title to the property thus found before the justice issuing the warrant, the justice shall cause the constable to deliver to the owner the property upon payment of the fees that may be due the justice and constable for their services, which shall be the same as for like services in ordinary cases at law.

**History.** Rev. Stat., ch. 134, § 15; C. & M. Dig., § 8746; Pope's Dig., § 11439; A.S.A. 1947, § 21-315.

## **CASE NOTES**

**Cited:** *Frazier v. Roberts*, 310 F. Supp. 504 (E.D. Ark. 1970).

**CHAPTERS 103-113**

[Reserved]

***SUBTITLE 8. AERONAUTICS*****CHAPTER 114****GENERAL PROVISIONS**

## SECTION.

27-114-101. Definitions.

27-114-102. Penalties.

27-114-103. Evidence — License number  
or identification mark.

## SECTION.

27-114-104. Evidence — Certified copies  
of records, etc.

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**Cross References.** Airport facilities  
generally, § 14-356-101 et seq.

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**27-114-101. Definitions.**

As used in this subtitle, unless the context otherwise requires:

(1) “Aeronautics” means the act or practice of the art and science of transportation by aircraft and operation, construction, repair, or maintenance of aircraft, airports, landing fields, or air navigation facilities, and including repairs, packing, and maintenance of parachutes;

(2) “Air navigation facilities” shall include airports, landing fields, and water surfaces for landing aircraft and all aids to air navigation, including, but not confined to, lights, marks, structures, and electrical communicating systems;

(3) “Aircraft” means any contrivance now known or hereafter invented, used, or designed for navigation of or flight in the air, except a parachute or other contrivance designed for such navigation but used primarily as safety equipment;

(4) “Airman” means an individual, including the person in command and any pilot, mechanic, or member of the crew who engages in the operation of aircraft while under way, any individual in charge of the inspecting, overhauling, or repairing of aircraft, or parachute riggers and repairmen;

(5) “Airport” means any locality, either of water or land, which is adapted for the landing and taking off of aircraft and which provides facilities for shelter, supply, and repair of aircraft or a place used regularly for receiving or discharging passengers or cargo by air;

(6) “Civil aircraft” means aircraft not of the military or naval forces of the United States Government and aircraft not used exclusively in any governmental service of any state or country;



(7) "Civil airway" means a route in the navigable air space over or above the territory or waters of the state designated by the department as a route suitable for intrastate or interstate air commerce;

(8) "Department" means the Arkansas Department of Aeronautics;

(9) "Intermediate landing field" means any locality, either of water or land, which is adapted for the landing and taking off of aircraft, is located along any airway, and is intermediate to airports and landing fields connected by the airway but which is not equipped with facilities for shelter, supply, and repair of aircraft and is not used regularly for the receiving or discharging of passengers or cargo by air;

(10) "Landing field" means any locality, either of water or land, which is adapted for the landing and taking off of aircraft, but which is not equipped with facilities for shelter, supply, and repair of aircraft;

(11) "Navigable air space" means the air space above the minimum safe altitudes of flight prescribed by the department;

(12) "Nonresident" shall apply to any person who has no regular place of abode or business within this state for a period longer than thirty (30) days or parts thereof, not necessarily consecutive, in the calendar year;

(13) "Owner" means any person, firm, partnership, or corporation holding title to any aircraft or having legal right to register it;

(14) "Passenger" means any person riding in an aircraft but having no part in its operation;

(15) "Person" means any individual, association, copartnership, firm, company, corporation, or other association of individuals;

(16) "Pilot" means an individual who operates an aircraft in flight or while under way; and

(17) "Secretary" means secretary of the department.

**History.** Acts 1941, No. 457, § 1; A.S.A. 1947, § 74-101.

## **27-114-102. Penalties.**

Any person violating any of the provisions of this act shall upon conviction before a court of competent jurisdiction be sentenced to pay a fine of not less than fifty dollars (\$50.00) nor more than two hundred dollars (\$200) and the cost of prosecution or undergo imprisonment for not more than thirty (30) days or suffer both fine and imprisonment. All fines collected shall be paid into the State Treasury and deposited to the credit of the Department of Arkansas State Police Fund.

**History.** Acts 1941, No. 457, § 17; . 104, 27-115-101 — 27-115-103, 27-115-106 A.S.A. 1947, § 74-117. — 27-115-109, 27-116-101, 27-116-102, 27-

**Meaning of "this act".** Acts 1941, No. 116-201 — 27-116-205, 27-116-301 — 27-457, codified as §§ 27-114-101 — 27-114-116-304.

**27-114-103. Evidence — License number or identification mark.**

In any proceeding for violating the provisions of this act or the rules and regulations of the department adopted pursuant to this act, the federal license number or identification mark displayed on the aircraft shall be prima facie evidence that the owner of the aircraft was operating the aircraft.

**History.** Acts 1941, No. 457, § 19; A.S.A. 1947, § 74-119.

**Meaning of "this act".** See note to § 27-114-102.

**27-114-104. Evidence — Certified copies of records, etc.**

Any certified copies or certified photostatic copies of any records, books, papers, documents, determinations, rulings, or orders of the Arkansas Department of Aeronautics, when certified under the seal of the department, shall be acceptable as evidence in the courts.

**History.** Acts 1941, No. 457, § 20; A.S.A. 1947, § 74-120.

**Cross References.** Certified copies of public records as self-authenticating, Arkansas Rules of Evidence 902, 1005.

Hearsay exception for public records and reports, Arkansas Rules of Evidence 803.

Photographic copies of public records as evidence, § 16-46-101.

**CHAPTER 115****ARKANSAS DEPARTMENT OF AERONAUTICS**

## SECTION.

27-115-101. Creation.

27-115-102. Purpose.

27-115-103. Members.

27-115-104. Director.

27-115-105. Secretary.

27-115-106. Administration — Promulgation of rules and regulations.

## SECTION.

27-115-107. Powers generally.

27-115-108. Duties generally.

27-115-109. Location and construction of landing fields — Working of prisoners.

27-115-110. Disposition of funds.

**Preambles.** Acts 1967, No. 449 contained a preamble which read: "Whereas, there are many thriving cities and towns in this State that would attract valuable industries by the construction of an airport and airport facilities; and

"Whereas, the State of Arkansas collected approximately \$98,000.00 in 1966 from the three per cent (3%) Arkansas Gross Receipts Tax levied on aviation fuel sold in this State; and

"Whereas, air transportation has become increasingly important to various industries, and could, if properly developed, contribute enormously to the contin-

ued growth of the Arkansas economy;

"Now, therefore...."

**Effective Dates.** Acts 1967, No. 449, § 4: Mar. 16, 1967. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that it is important to the welfare of this State that the economy of this State continue to grow at a rapid rate in order to create new jobs for the people of this State; that the building of airports and airport facilities is conducive to attracting industry to this State and with such industries will come new jobs and a new source of revenues for the State; and



that in order to boost the economic growth of Arkansas and to create new jobs for the residents of this State it is necessary that this Act become effective immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1969, No. 519, § 8: became law without Governor's signature, Apr. 17, 1969. Emergency clause provided: "It is hereby found and determined that the Sixty-Seventh General Assembly has, by a vote of two-thirds of the members elected to both Houses, voted to extend the regular session of the Sixty-Seventh General Assembly, as authorized in the Constitution; that under the provisions of Amendment 7 to the Constitution, enactments of the General Assembly that do not have an emergency clause do not become effective until ninety (90) days after the date of final adjournment of the General Assembly; that the extended session of the General Assembly may not adjourn in time for this Act to take effect prior to July 1, 1969, thereby depriving the agency for which funds are appropriated herein of necessary operating funds to commence the next fiscal biennium; and in order that the appropriations made herein may be available on July 1, 1969, the General Assembly hereby determines that the immediate passage of this Act is necessary for the maintenance and operation of the essential governmental services. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval, provided that the appropriation authorized herein shall not be available until July 1, 1969."

Acts 1977, No. 733, § 3: Mar. 24, 1977. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that it is important to the welfare of this State that the economy of this State continue to grow at a rapid rate in order to create new jobs for the people of this State; that the building of airports and airport facilities is conducive to attracting industry to this State; with such industries will come new jobs and a new source of revenues for the

State; and that in order to boost the economic growth of Arkansas and to create new jobs for the residents of this State it is necessary that this Act become effective immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1983, No. 474, § 4 [3]: Mar. 16, 1983. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that it is important to the welfare of this State that the economy of this State continue to grow at a rapid rate in order to create new jobs for the people of this State; that the building of airports and airport facilities is conducive to attracting industry to this State, and with such industries will come new jobs and a new source of revenues for the State; and that in order to boost the economic growth of Arkansas and to create new jobs for the residents of this State it is necessary that this Act become effective immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1983, No. 691, § 19: effective on close of business June 30, 1983. Emergency clause provided: "It is hereby found and determined by the General Assembly that the various boards, commissions, departments, agencies, and services transferred to the Department of Commerce under the provisions of Act 38 of 1971, as amended, could perform their duties more efficiently as independent agencies; that the agencies and services consolidated within the Department of Commerce under Act 38 of 1971 are so diverse in their purposes and duties that it is difficult for the Administrator of said Department to exert leadership in the operation of such agencies and programs; and, that the abolishment of the Department of Commerce and its central services would result in financial savings which could be best used for the support and operation of other essential services of government, and that the immediate passage of this Act is necessary to provide for the repeal of the Department of Commerce and for



the transition of the various departments, agencies, boards, commissions, and programs and services within said Department to an independent status, as provided herein. Therefore, an emergency is hereby declared to exist and this Act, being immediately necessary for the preservation of the public peace, health, and safety, shall be in full force and effect as follows: Section 15 of this Act shall be effective from and after March 1, 1983, and the remaining provisions of this Act shall be effective on the close of business June 30, 1983 and thereafter."

Acts 1997, No. 924, § 5: July 1, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that, because of the passage of Acts 58 and 61 of the First Extraordinary Session of 1992, the Department of Aeronautics has seen

its funds for grants to local airports drop dramatically; that the Department is in desperate need of new tax revenues in order to provide financial assistance to local airports in Arkansas; that this act will generate additional tax revenues to the Department of Aeronautics for those local airports; that all airports of this State should receive the financial assistance as soon as possible; and that the orderly levy and administration of this tax demands that collections should therefore begin at the commencement of the fiscal year for State government. Therefore, in order to speed the financial assistance to local airports, an emergency is hereby declared to exist, and this act being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after July 1, 1997."

## RESEARCH REFERENCES

**Ark. L. Rev.** Administrative Law in Arkansas, 4 Ark. L. Rev. 107.

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### 27-115-101. Creation.

There is created a commission to be known as the "Arkansas Department of Aeronautics", which shall maintain an office in the City of Little Rock.

**History.** Acts 1941, No. 457, § 2; 1961, No. 155, § 1; 1965, No. 456, § 1; A.S.A. 1947, § 74-102.

**Publisher's Notes.** The first sentence of Acts 1983, No. 691, § 13, provided that the Department of Aeronautics and the Aeronautics Commission and its functions, powers, and duties, which had been transferred to the Department of Local Services by Acts 1975, No. 278 and subse-

quently transferred to the Department of Commerce by Acts 1981, No. 764, § 3, would be separated from the Department of Commerce and established as an independent agency of state government, to function in the same manner as prior to its transfer to those departments. The second sentence of § 13 of Act 691 of 1983 is codified as § 27-115-105.

### 27-115-102. Purpose.

The Arkansas Department of Aeronautics is established and authorized to represent the State of Arkansas in the promotion and development of landing fields, airports, hangars, and other aeronautical projects and to cooperate with and secure the cooperation of the Federal Aviation Administration and any other duly authorized federal agencies interested in the development of aeronautics.

**History.** Acts 1941, No. 457, § 23; A.S.A. 1947, § 74-123.

### **27-115-103. Members.**

(a) The Arkansas Department of Aeronautics shall be composed of seven (7) members appointed by the Governor.

(b) One (1) of the members shall be appointed from each of the four (4) congressional districts, and three (3) members shall be appointed from the state at large.

(c) Appointments shall be for terms of five (5) years.

**History.** Acts 1941, No. 457, § 2; 1961, No. 155, § 1; 1965, No. 456, § 1; 1973, No. 64, § 1; 1985, No. 257, § 1; A.S.A. 1947, §§ 74-102, 74-102.1.

**Publisher's Notes.** The terms of the members of the Arkansas Department of Aeronautics are arranged so that two terms expire every first and fifth year and one term expires in each of the three intervening years.

Acts 1973, No. 64, § 2, provided that it was the intent and purpose of the act to add two members to the Arkansas Aeronautics Commission and to assure that the addition of such members to the commission should not affect the term of any member of the commission serving on the effective date of the act.

### **27-115-104. Director.**

Any person employed as Director of the Arkansas Department of Aeronautics shall possess the qualifications of a multi-engine commercial pilot. No other flight or pilot qualification shall be required for such director.

**History.** Acts 1969, No. 519, § 4.

### **27-115-105. Secretary.**

The Secretary of the Arkansas Department of Aeronautics, or the administrative head of the department, shall be appointed by the department with the approval of the Governor and shall serve at the pleasure of the Governor.

**History.** Acts 1983, No. 691, § 13; A.S.A. 1947, § 74-102a.

### **27-115-106. Administration — Promulgation of rules and regulations.**

The Arkansas Department of Aeronautics shall administer the provisions of this chapter and § 27-116-101 et seq. and is authorized and directed to promulgate regulations as necessary to execute the powers invested in it by this chapter and § 27-116-101 et seq. and other applicable laws.

**History.** Acts 1941, No. 457, § 3; A.S.A. 1947, § 74-103.

**27-115-107. Powers generally.**

(a) The Arkansas Department of Aeronautics shall have the right to:

(1) Receive grants and donations, appropriations, and other funds or materials on behalf of the state or any county or municipality for utilization in the development of aeronautics, provided that the department shall not have the right to use the funds received for a particular purpose for any other purpose without the consent of the person or agency providing the particular funds; and

(2) Plan and lay out a state system of landing fields, airports, and airways and to inspect them and to close any landing field or airport found to be unsafe.

(b) The department is authorized:

(1) To accept as a loan or a gift any aircraft made available for its use by the federal government or any agency thereof; or

(2) To match any funds made available by the federal government, any agency thereof, or any person or corporation with any moneys available to the department for the purpose of acquiring any aircraft which it may deem necessary to the proper performance of its duties as provided by law.

**History.** Acts 1941, No. 457, §§ 21, 23;  
1961, No. 155, § 2; 1985, No. 257, § 3;  
A.S.A. 1947, §§ 74-121, 74-123.

**27-115-108. Duties generally.**

(a) It shall be the duty of the Arkansas Department of Aeronautics to:

(1) Provide for the examination, rating, and licensing of airports, landing fields, and air navigation facilities available for the use of aircraft;

(2) Adopt rules and regulations for the issuance, expiration, suspension, or revocation of licenses of airports, landing fields, and air navigation facilities, and of other licenses or certificates that the department deems necessary in administering the functions vested in the department under this chapter and § 27-116-101 et seq.;

(3) Establish, set apart, and provide for the protection of necessary air space reservations within the state in addition to and not in conflict with air space reservations established by the President of the United States or any department of the United States or with any civil or military airway designated under the provisions of the Air Commerce Act and the amendments thereto, or other act of Congress pertaining thereto;

(4) Designate, establish, and chart civil airways within, over, and above the lands or waters of the state and arrange for publication of maps of such airways, utilizing the facilities and assistance of existing agencies of the state as far as practicable. The department shall grant no exclusive right for the use of any civil airway, airport, intermediate landing field, or other air navigation facility under its jurisdiction;



(5) Investigate, record, and report the causes of accidents in civil air navigation within this state;

(6) Encourage the establishment of airports, civil airways, and other air navigation facilities;

(7) Supervise and regulate the safety, adequacy, and sufficiency of all airports, landing fields, and air navigation facilities and equipment used or to be used in private or commercial flying;

(8) Adopt rules and regulations governing instruction in flight or ground school offered to student fliers or mechanics when the instruction is conducted by individual flight instructors licensed under appropriate Federal Aviation Administration regulations and adopt rules and regulations governing the safety, adequacy, and sufficiency of airports, landing fields, and air navigation facilities and equipment used or to be used in the instruction of student fliers or mechanics;

(9) Adopt rules and regulations for the marking of highways, municipalities, and all other serial markings used throughout the state;

(10) Adopt rules and regulations governing the erection, location, and maintenance of aerial beacon lights and other aerial night lighting equipment within the state;

(11) Exchange with the Federal Aviation Administration and other state governments through existing governmental channels information pertaining to civil air navigation;

(12) Enforce the regulations and air traffic rules, promulgated as provided hereunder, through the assistance and cooperation of state and local authorities charged with the enforcement of law in their respective jurisdictions; and

(13) Establish by regulation the minimum safe altitudes for flight, including air traffic rules.

(b) All rules and regulations prescribed by the department under the authority of this section shall be consistent with and conform to current federal legislation governing aeronautics and the regulations duly promulgated thereunder and rules issued from time to time pursuant thereto. Nothing in this section shall confer upon the department the power to determine schedules, issue stock, or determine public convenience or the adequacy and sufficiency of service of common carriers engaged in commercial flying within this state.

**History.** Acts 1941, No. 457, § 3; 1975, No. 740, § 1; A.S.A. 1947, § 74-103.

**U.S. Code.** The Air Commerce Act referred to in this section is codified throughout Title 49 of the U.S. Code.

**Cross References.** Municipalities to prepare marking signs, § 14-356-101.

## **27-115-109. Location and construction of landing fields — Working of prisoners.**

(a) The Arkansas Department of Aeronautics shall assist in the location of landing fields and the promotion and development of aeronautics throughout the state.

(b) The Arkansas Department of Aeronautics shall have the authority to use for the construction and development of these fields and for the grading and construction of highways leading thereto, any equipment of the Arkansas State Highway and Transportation Department which is not at that time required for other construction purposes.

(c) The Arkansas Department of Aeronautics is further authorized and empowered to make agreements and arrangements with the Board of Corrections for the use of convicts for any construction work in connection with the landing fields and roads.

(d) Counties, cities, and incorporated towns are likewise specifically permitted to authorize the use by the Arkansas Department of Aeronautics of their prisoners and equipment in a similar manner on projects in which they are interested and which are being developed by the Arkansas Department of Aeronautics or with the approval of the Arkansas Department of Aeronautics.

**History.** Acts 1941, No. 457, § 22; A.S.A. 1947, § 74-122.

**A.C.R.C. Notes.** Acts 2001, No. 323, § 1, provided: "Legislative intent. The General Assembly, in Act 549 of 1993, established the Arkansas Department of Community Punishment and delineated its purposes. Confusion in the public's perception, with regard to the purposes of the department, exists and will persist because of the inconsistency between the name of the department and its established purposes. The purpose of this act is to provide the department with a name that more accurately describes its role as an agency that is intended to fulfill the legislatively established purposes of supervision, treatment, rehabilitation, and restoration of adult offenders as useful

law-abiding citizens within the community and to provide its supervisory board with a name consistent with the department's name change."

Acts 2001, No. 323, § 3, provided: "The 'Board of Correction and Community Punishment', as established in Arkansas Code 12-27-104 and 16-93-1203, shall hereafter be known as the 'Board of Corrections'."

Acts 2001, No. 323, § 5, provided: "(a) The Arkansas Code Revision Commission shall make appropriate name changes in the Arkansas Code to implement this act.

"(b) The Arkansas Code Revision Commission is not required to codify this act."

**Cross References.** Department of Correction and Department of Community Correction, § 12-27-101 et seq.

## **27-115-110. Disposition of funds.**

(a) All revenues derived from the levying of the Arkansas Gross Receipts Tax, as amended, § 26-52-101 et seq., upon aircraft and aviation fuel, aviation services, aircraft parts and accessories, and other gross receipts taxes remitted by aircraft dealers, airports, and flying fields shall be reported to the Director of the Department of Finance and Administration in a manner and on forms as he or she shall direct.

(b) The Arkansas Department of Aeronautics is authorized to accept donations and grants of all property, whether real or personal.

(c) Tax proceeds and grants and donations of money shall be special revenues and shall be deposited in the State Treasury to the credit of the Arkansas Department of Aeronautics Fund to be used for constructing and improving airports, civil airways, and other air navigation facilities and for preserving the history of aviation in the state.



(d) The Arkansas Department of Aeronautics shall administer the funds so deposited and shall use the funds for the sole purpose of building airports, civil airways, and other air navigation facilities in this state in those cities or towns as the Arkansas Department of Aeronautics, in coordination with the Arkansas Economic Development Council, shall determine would attract the greatest volume of industry to this state.

(e) The funds may also be used for the purpose of:

(1) Matching funds with any federal funds made available for the purpose of this section;

(2) Establishing an aviation museum to preserve the history of aviation in the state. Assistance for the establishment of an aviation museum shall not exceed a total of twenty thousand dollars (\$20,000).

(f)(1) All revenues derived from the levying of the compensating use tax under the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq., upon aircraft and aviation fuel, aviation services, and aircraft parts and accessories remitted by aircraft dealers, airports, and flying fields shall be reported to the Director of the Arkansas Department of Aeronautics in a manner and on forms as he or she shall direct.

(2) The first eight hundred thousand dollars (\$800,000) of the state use tax collected after June 30, 1997, and collected through June 30, 1998, shall be deposited in the State Treasury as general revenues. The remainder of the revenues collected during this period shall be special revenues and shall be deposited in the State Treasury to the credit of the fund to be used for the purposes set forth in this subsection.

(3) The first eight hundred thousand dollars (\$800,000) of the state use tax collected after June 30, 1998, and collected through June 30, 1999, shall be deposited in the State Treasury as general revenues. The remainder of the revenues collected during this period shall be special revenues and shall be deposited in the State Treasury to the credit of the fund to be used for the purposes set forth in this subsection.

(4) The first four hundred thousand dollars (\$400,000) of the state use tax collected after June 30, 1999, and collected through June 30, 2000, shall be deposited in the State Treasury as general revenues. The remainder of the revenues collected during this period shall be special revenues and shall be deposited in the State Treasury to the credit of the fund to be used for the purposes set forth in this subsection.

(5) The first two hundred thousand dollars (\$200,000) of the state use tax collected after June 30, 2000, and collected through June 30, 2001, shall be deposited in the State Treasury as general revenues. The remainder of the revenues collected during this period shall be special revenues and shall be deposited in the State Treasury to the credit of the fund to be used for the purposes set forth in this subsection.

(6) Beginning July 1, 2001, all state use tax derived shall be special revenues and shall be deposited in the State Treasury to the credit of the fund to be used for the purposes set forth in this subsection.



**History.** Acts 1967, No. 449, §§ 1, 2; A.S.A. 1947, §§ 74-214, 74-215; Acts 1997, 1977, No. 733, § 1; 1983, No. 474, §§ 1, 2; No. 540, §§ 62, 93; 1997, No. 924, § 1.

## CHAPTER 116

### REGULATION OF AIRCRAFT

#### SUBCHAPTER.

1. GENERAL PROVISIONS.
2. REGISTRATION AND LICENSING.
3. LAWS GOVERNING OPERATIONS.
4. DOWNED AIRCRAFT DEVICES.
5. OPERATION OF A PROHIBITED AIRCRAFT.

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#### RESEARCH REFERENCES

**Am. Jur.** 8 Am. Jur. 2d, Aviation, § 9 et seq.      **C.J.S.** 2A C.J.S., Aeronautics, § 12 et seq.

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#### SUBCHAPTER 1 — GENERAL PROVISIONS

#### SECTION.

27-116-101. Unlawful acts.

27-116-102. Ownership and use of air-space — Emergency landings.

#### 27-116-101. Unlawful acts.

It shall be unlawful for any person to:

(1) Operate or navigate aircraft while under the influence of intoxicating liquor or narcotic drug or habit-producing drug, or permit any person who may be under the influence of intoxicating liquor or narcotic or habit-producing drug to operate or navigate any aircraft owned by him or her or in his or her custody or control;

(2) Operate or navigate aircraft while in possession of any federal license or to display or cause or permit to be displayed the license, knowing it to have been cancelled, revoked, suspended, or altered;

(3) Lend to or knowingly permit the use of by one not entitled to a license any federal airman's and aircraft license issued to the person lending or permitting the use thereof;

(4) Display or represent as one's own any federal airman's or aircraft license not issued to the person displaying it;

(5) Tamper with, make use of or navigate any aircraft without the knowledge or consent of the owner or custodian thereof; or

(6) Use a false or fictitious name or give a false or fictitious address in any application or form required under the provisions of § 27-115-101 et seq. and this chapter, or the rules and regulations of the department adopted pursuant to § 27-115-101 et seq. and this chapter, knowingly

make any false statement or report, knowingly conceal a material fact, or otherwise commit a fraud in any application.

**History.** Acts 1941, No. 457, § 16;  
A.S.A. 1947, § 74-116.

## **27-116-102. Ownership and use of airspace — Emergency landings.**

(a) The ownership of the space over and above the lands and waters of this state is declared to be vested in the owner of the surface beneath, but this ownership extends only so far as is necessary to the enjoyment of the use of the surface without interference and is subject to the right of passage or flight of aircraft.

(b) Flight through the space over and above land or water at a sufficient height and without interference to the enjoyment and use of the land or water beneath is not an actionable wrong unless the flight results in actual damage to the land or water or property thereon or therein or use of the land or water beneath.

(c) Flight in aircraft over the lands and waters of this state is lawful, unless at an altitude low enough to interfere with the then-existing use to which the land or water or the space over the land or water is put by the owner or unless so conducted as to be dangerous or damaging to persons or property lawfully on the land or water beneath.

(d) The landing of an aircraft on the lands or waters of another without his or her consent is unlawful, except in the case of a forced or emergency landing.

**History.** Acts 1941, No. 457, §§ 8, 9;  
A.S.A. 1947, §§ 74-108, 74-109.

### **CASE NOTES**

#### **Nuisance.**

Trial court did not abuse its discretion in finding that a neighbor's airfield operation was a nuisance to adjoining landowners who had a facility for flying remote control planes, because the full size airplanes' flight path went directly over the remote plane facility, and planes flew at altitudes between 15 and 30 feet accord-

ing to witnesses. Because such flight posed a serious risk of harm to persons on the ground and drivers on a nearby road, such flight was a nuisance and therefore not "lawful" flight permitted by subsection (c) of this section. *Aviation Cadet Museum, Inc. v. Hammer*, 373 Ark. 202, 283 S.W.3d 198 (2008).

## **SUBCHAPTER 2 — REGISTRATION AND LICENSING**

### **SECTION.**

27-116-201. Persons engaged in aeronautics.

27-116-202. Aircraft.

27-116-203. Nonresidents.

### **SECTION.**

27-116-204. Airports, etc. — Procedure for denial or revocation.

27-116-205. Display of licenses.

**27-116-201. Persons engaged in aeronautics.**

The public safety requiring and the advantages of uniform regulation making it desirable in the interest of aeronautical progress that any person engaging within this state in navigating or operating aircraft in any form of navigation or while in charge of the inspecting, overhauling, or repairing of aircraft or the repairing, packing, and maintenance of parachutes shall have the qualifications necessary for obtaining and holding a license issued by the Federal Aviation Administration, it shall be unlawful for any person to operate or navigate or inspect, overhaul, or repair any aircraft, or repair, pack, and maintain parachutes in this state unless the person is the holder of an appropriate and effective license or permit issued by the United States Government.

**History.** Acts 1941, No. 457, § 5; A.S.A. 1947, § 74-105.

**CASE NOTES****Negligence.**

Although evidence that pilot was not properly licensed for crop-dusting was admissible as relevant to the question of the pilot's competence and skill and to farmer's negligence in employing him, it was error to instruct jury that violation of this section, although not necessarily negli-

gence, was evidence of negligence, where record was void of evidence linking the statutory violation with fatal accident and plaintiff failed to show that violation was a proximate or efficient cause of death. *Riddell v. Little*, 253 Ark. 686, 488 S.W.2d 34 (1973).

**27-116-202. Aircraft.**

The public safety requiring and the advantages of uniform regulation making it desirable in the interest of aeronautical progress that aircraft operating within this state should conform with respect to design, construction, and airworthiness to the standards prescribed by the United States Government with respect to navigation of civil aircraft subject to its jurisdiction, it shall be unlawful for any person or resident to operate or navigate any aircraft within this state unless the aircraft has an appropriate effective license issued by the United States Government and is registered by the United States Government.

**History.** Acts 1941, No. 457, § 4; A.S.A. 1947, § 74-104.

**27-116-203. Nonresidents.**

(a) The provisions of this subchapter and § 27-116-101 et seq. and § 27-116-301 et seq., insofar as they relate to registration and license, shall not apply to aircraft owned and operated within this state by nonresidents of this state for a period not to exceed thirty (30) days in the calendar year, provided that the owner or pilot can show satisfactory proof he or she has complied with the laws relating to registration



and license of airmen and aircraft in the state, territory, district, or country of which he or she is a resident.

(b) A nonresident owner or airman cannot engage within this state in the carrying of passengers, merchandise, or property for hire or reward by means of civil aircraft or in any commercial aircraft flying for hire or reward, unless he or she has complied with the provisions of this subchapter and § 27-116-101 et seq. and § 27-116-301 et seq. governing registration and license as if he or she were a resident of this state.

**History.** Acts 1941, No. 457, § 7; A.S.A. 1947, § 74-107.

### **27-116-204. Airports, etc. — Procedure for denial or revocation.**

(a) The licenses of airports, landing fields, air navigation facilities, and other licenses or certificates that the Arkansas Department of Aeronautics may issue under authority of this subchapter and § 27-116-101 et seq. and § 27-116-301 et seq. shall be denied or revoked only after the applicant or licensee shall have been accorded a hearing thereon.

(b) Within ten (10) days after notice that application for registration and license has been denied or the license or certificate revoked, the applicant or holder may file a written request with the department for a public hearing thereon.

(c) The secretary of the department upon receipt of the request shall:

(1) Arrange for a public hearing to be held within twenty (20) days after receipt in such place as the secretary deems most practicable and convenient; and

(2) Give the applicant or holder at least ten (10) days' notice of the hearing unless an earlier hearing is consented to by the applicant or holder. Notice may be served personally or sent to the applicant or holder by registered mail.

**History.** Acts 1941, No. 457, § 15; 1985, No. 257, § 2; A.S.A. 1947, § 74-115.

### **27-116-205. Display of licenses.**

The certificate of the license required for the person operating aircraft and the certificate of the license required for aircraft and other licenses or certificates that may be issued by the Arkansas Department of Aeronautics shall be kept in such places and exhibited to such persons at such time and under such regulations and circumstances as shall be required by the regulations of the department.

**History.** Acts 1941, No. 457, § 6; A.S.A. 1947, § 74-106.

**SUBCHAPTER 3 — LAWS GOVERNING OPERATIONS**

## SECTION.

27-116-301. Crimes, torts, etc., committed in flight.

27-116-302. Contracts made in flight.

27-116-303. Liability for injury to persons or property.

## SECTION.

27-116-304. Liability for damages caused by aircraft collisions.

**27-116-301. Crimes, torts, etc., committed in flight.**

(a) All crimes, torts, and other wrongs committed by or against a pilot or passengers while in flight over or above the lands and waters of this state shall be governed by the laws of this state.

(b) Whether damage occasioned by or to an aircraft while over this state constitutes a tort, crime, or other wrong by or against the owner of the aircraft shall be determined by the laws of this state.

**History.** Acts 1941, No. 457, § 11;  
A.S.A. 1947, § 74-111.

**CASE NOTES**

## ANALYSIS

**Purpose.**

**Applicability.**

**Purpose.**

This section and § 27-116-303, enacted in the 1940s, were not intended to resolve choice of law questions in aviation accident litigation; rather, these statutes merely clarify that aviation accidents are to be treated as any other torts under

state law. In re Aircraft Accident at Little Rock, 231 F. Supp. 2d 852 (E.D. Ark. 2002), *aff'd*, Rustenhaven v. Am. Airlines Inc. (In re Aircraft Accident at Little Rock), 351 F.3d 874 (8th Cir. 2003).

**Applicability.**

Arkansas substantive law would be applied to an action arising from the crash in Arkansas of an airplane bound from Texas to Arkansas. Sattari v. American Airlines, Inc., 125 F. Supp. 2d 357 (W.D. Ark. 2000).

**27-116-302. Contracts made in flight.**

All contractual and other relations entered into by pilots or passengers while in flight over or above the lands or waters of this state shall be governed by the laws applicable to similar relations entered into on the lands of this state.

**History.** Acts 1941, No. 457, § 12;  
A.S.A. 1947, § 74-112.

**27-116-303. Liability for injury to persons or property.**

(a) The owner and the pilot, or either of them, of every aircraft which is operated over the lands or waters of this state shall be liable for injuries or damage to persons or property on or above the land or water beneath caused by the ascent, descent, or flight of aircraft, or the dropping or falling of any object therefrom, in accordance with the rules of law applicable to torts on land in this state.

(b) The liability of the owner or pilot of an aircraft carrying passengers for injury or death to his or her passengers shall be determined by the rules of law applicable to torts on the lands or waters of this state arising out of similar relationships.

(c)(1) As used in subsection (a) of this section, "owner" shall include a person having full title to aircraft and operating it through servants and shall also include a bona fide lessee or bailee of the aircraft, whether gratuitously or for hire; but "owner", as used in subsection (a) of this section, shall not include a bona fide bailor or lessor of such aircraft, whether gratuitously or for hire, or a mortgagee, conditional seller, trustee for creditors of the aircraft, or other persons having a security title only, nor shall the owner of the aircraft be liable when the pilot thereof is in possession of the aircraft as a result of theft or felonious conversion.

(2) The person in whose name an aircraft is registered with the Federal Aviation Administration shall be prima facie the owner of the aircraft within the meaning of subsection (a) of this section.

**History.** Acts 1941, No. 457, §§ 10, 13;  
A.S.A. 1947, §§ 74-110, 74-113.

### CASE NOTES

#### ANALYSIS

Purpose.

Applicability.

Liability of Owners for Lessee's Actions.

#### Purpose.

Section 27-116-301 and this section, enacted in the 1940s, were not intended to resolve choice of law questions in aviation accident litigation; rather, these statutes merely clarify that aviation accidents are to be treated as any other torts under state law. In re Aircraft Accident at Little Rock, 231 F. Supp. 2d 852 (E.D. Ark. 2002), *aff'd*, Rustenhaven v. Am. Airlines Inc. (In re Aircraft Accident at Little Rock), 351 F.3d 874 (8th Cir. 2003).

#### Applicability.

Arkansas substantive law would be applied to an action arising from the crash in

Arkansas of an airplane bound from Texas to Arkansas. Sattari v. American Airlines, Inc., 125 F. Supp. 2d 357 (W.D. Ark. 2000).

#### Liability of Owners for Lessee's Actions.

Owner of plane who rented it to holder of a student permit, prohibited under civil aeronautics authority from taking passengers in plane, was not liable for death of passenger taken in plane by student pilot, even though pilot was known to be a reckless operator, as owner had no reason to believe that student pilot would take a passenger with him. Central Flying Serv. v. Crigger, 215 Ark. 400, 221 S.W.2d 45 (1949).

**Cited:** Riddell v. Little, 253 Ark. 686, 488 S.W.2d 34 (1973).

### 27-116-304. Liability for damages caused by aircraft collisions.

The liability of the owner of one (1) aircraft to the owner of another aircraft or to pilots or passengers on either aircraft for damage caused by collision on land or in the air shall be determined by the rules of law applicable to torts on the lands or waters of this state.



**History.** Acts 1941, No. 457, § 14;  
A.S.A. 1947, § 74-114.

#### SUBCHAPTER 4 — DOWNED AIRCRAFT DEVICES

SECTION.

27-116-401. Administration.

27-116-402. Penalty.

27-116-403. Devices required — Exceptions.

SECTION.

27-116-404. Inspection.

27-116-405. Presale requirements.

##### **27-116-401. Administration.**

The provisions of this subchapter shall be administered by the Arkansas Aeronautics Commission through the Arkansas Department of Aeronautics, hereafter referred to as the “department”.

**History.** Acts 1971, No. 52, § 2; A.S.A. 1947, § 74-126.

**Cross References.** Arkansas Department of Aeronautics, § 27-115-101.

##### **27-116-402. Penalty.**

Any person violating the provisions of this subchapter shall be guilty of a misdemeanor.

**History.** Acts 1971, No. 52, § 9; A.S.A. 1947, § 74-133.

##### **27-116-403. Devices required — Exceptions.**

(a)(1) The General Assembly finds and declares that it is in the interest of public safety to facilitate by the most expeditious means available the search for and location of aircraft which have crashed or been forced to land in remote or inaccessible areas.

(2) It is therefore the policy of this state that all civil aircraft, except aircraft used for agricultural spraying or crop dusting, experimental aircraft operating for testing purposes, aircraft of primarily antique or historical value or interest, gliders, and lighter-than-air craft located for tax purposes within the territorial limits of this state, shall be equipped with an approved device capable of indicating by radio transmissions the position of the aircraft when grounded because of mechanical or other failure at a place other than at an airport.

(b) The Arkansas Department of Aeronautics shall establish minimum standards for downed aircraft radio transmitting devices. The standards shall require that the devices be used on all aircraft, except as provided otherwise in this subchapter.

(c)(1) Upon petition by the owner of any aircraft, the department may exempt the aircraft from the requirements of a downed aircraft rescue transmitter upon a showing to the satisfaction of the department that the device would not sufficiently increase the safety of operations in the particular case.

(2) The provisions of this subchapter shall not apply to air carrier aircraft operating pursuant to both a federal certificate of public convenience and necessity and a federal air carrier operating certificate.

**History.** Acts 1971, No. 52, §§ 1, 5, 6, 8; A.S.A. 1947, §§ 74-125, 74-129, 74-130, 74-132.

### **27-116-404. Inspection.**

(a) The Arkansas Department of Aeronautics shall examine or cause to be examined downed aircraft transmitting devices submitted to it for approval by the manufacturer or distributor and shall approve for use those units found to be effective and reliable within the limits and standards established by the department.

(b) Manufacturers or distributors making application for approval shall as prescribed by the department furnish information, supply units for testing, and submit fees as determined by the department sufficient to defray the cost of testing.

(c) The downed aircraft transmitting devices approved by the department must be of sufficient durability to withstand the impact of a crash and automatically activate to transmit an effective signal on a preset emergency distress radio frequency to enable the location of the aircraft to be fixed.

**History.** Acts 1971, No. 52, §§ 3, 4; A.S.A. 1947, §§ 74-127, 74-128.

### **27-116-405. Presale requirements.**

(a) No person shall sell or offer for sale any downed aircraft transmitting device which does not satisfy all of the following requirements:

(1) The device shall meet the minimum standards for transmitting devices established pursuant to this subchapter and the regulations promulgated by the Arkansas Department of Aeronautics hereunder;

(2) The device shall be approved by the department as provided by this subchapter; and

(3) The device shall have legibly inscribed thereon or permanently affixed thereto by the manufacturer the following statement: "This downed aircraft transmitter has been approved by, and meets the minimum standards for such devices established by, the State of Arkansas."

(b) No downed aircraft transmitting device which fails to exhibit the inscription required in subdivision (a)(3) of this section shall meet the requirements of this subchapter.

**History.** Acts 1971, No. 52, § 7; A.S.A. 1947, § 74-131.

**SUBCHAPTER 5 — OPERATION OF A PROHIBITED AIRCRAFT**

## SECTION.

27-116-501. Definitions.

27-116-502. Acts constituting offense —  
Inspection.**27-116-501. Definitions.**

As used in this subchapter, unless the context otherwise requires:

(1) "Aircraft" means any contrivance invented, used, or designed for the navigation of or flight in the air and which is required to be registered under the laws of the United States. "Aircraft" does not include experimental aircraft; and

(2) "Federal aviation regulations" means regulations adopted by the Federal Aviation Administration regarding identification and registration markings, procedures for products and parts, maintenance, preventive maintenance, rebuilding and alteration regulations, and general operating and flight rules, 14 C.F.R. Parts 21, 43, 45, 47, and 91 as those regulations existed on January 1, 1990.

**History.** Acts 1989, No. 516, § 1.

**27-116-502. Acts constituting offense — Inspection.**

(a) A person commits the offense of operation of a prohibited aircraft if the person knowingly:

(1) Operates an aircraft that does not have aircraft identification numbers that comply with identification and registration marking regulations adopted by the Federal Aviation Administration, 14 C.F.R. Part 45;

(2) Operates or navigates an aircraft that is not properly registered under Federal Aviation Administration aircraft registration regulations, 45 C.F.R. Part 47; or

(3) Operates an aircraft equipped with a fuel tank, bladder, drum, or other container for fuel that does not conform to federal aviation regulations or that has not been approved by the Federal Aviation Administration by inspection or special permit under regulations adopted by the Federal Aviation Administration, 14 C.F.R. Parts 21, 43, or 91.

(b) Operation of a prohibited aircraft is a Class C felony.

(c)(1) The failure to properly display on an aircraft identification numbers in compliance with federal aviation regulations shall be probable cause for a law enforcement officer to inspect the aircraft to determine the identity of the owner.

(2) A law enforcement officer may inspect an aircraft under this section if the aircraft is located:

(A) On public property; or

(B) On private property, if the officer has the consent of the property owner.



**History.** Acts 1989, No. 516, § 2.

## CHAPTER 117

### APPROACH ZONES

SECTION.

27-117-101. Definitions.

27-117-102. Penalty.

27-117-103. Wires prohibited.

27-117-104. Removal of wires.

SECTION.

27-117-105. Minimum distance between towers and runways —  
Penalty for noncompliance —  
Exemptions.

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### RESEARCH REFERENCES

**ALR.** Airport operations or flight of aircraft as constituting taking or damaging of property. 22 A.L.R.4th 863.

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#### 27-117-101. Definitions.

As used in this chapter, unless the context otherwise requires:

(1) "Airport" means any area of land or water designed and set aside for the landing and taking off of aircraft and available to and utilized by the general public for private or commercial landing and taking off of aircraft; and

(2) "Approach zone" means any area of land or water, according to the current airport approach and turning space standards promulgated by the Federal Aviation Administration which is required for the flight of aircraft in landing or taking off at any airport.

**History.** Acts 1949, No. 285, § 1; A.S.A. 1947, § 74-309.

#### 27-117-102. Penalty.

Any person, company, firm, or corporation violating the terms of this chapter or failing or refusing to remove any lines now established within the approach zone of any airport shall be guilty of a misdemeanor and upon conviction shall be fined in any sum not less than one thousand dollars (\$1,000) nor more than ten thousand dollars (\$10,000).

**History.** Acts 1949, No. 285, § 4; A.S.A. 1947, § 74-312.

**27-117-103. Wires prohibited.**

No wires of any kind or description, including, but not limited to, those over which electricity or messages are transmitted shall be constructed, operated, or maintained within the approach zone of any airport in this state.

**History.** Acts 1949, No. 285, § 2; A.S.A. 1947, § 74-310.

**27-117-104. Removal of wires.**

(a) Every person, company, firm, or corporation which now owns, operates, manages, or controls any wire of any kind or description, including, but not limited to, those over which electricity or messages are transmitted located within the approach zone of any airport in this state shall remove the wires from the approach zone of the airport. Removal shall not be required until the owner or operator of the airport affected requests the removal in writing specifying the wires to be removed and the owner or operator has either paid to the person required by this chapter to remove the wires or has executed a good and sufficient bond with corporate surety thereon as security for the payment in a sum of money sufficient to pay all the actual cost of removing the wires, together with the poles, crossarms, and other equipment connected thereto, and the actual cost of:

(1) Constructing underground conduits and the construction of wires and equipment in the conduits; or

(2) Rerouting such wires, together with the poles, crossarms, and other equipment connected thereto together with the cost, if any, of new rights-of-way made necessary by the rerouting.

(b) In the event that the parties are unable to agree upon the amount of such costs, the Arkansas Public Service Commission shall determine the amount of the costs. Appeal from determination by the commission shall be had in the manner provided by law.

**History.** Acts 1949, No. 285, § 3; A.S.A. 1947, § 74-311.

**27-117-105. Minimum distance between towers and runways — Penalty for noncompliance — Exemptions.**

(a) For purposes of this section, an “aeronautical facility” means any public airport or military airport which has a hard surface runway.

(b) No structure in excess of one hundred feet (100') in height may be constructed within twenty-five hundred feet (2,500') from either side of a runway centerline running the full length of that runway, including the runway protection zone and runway safety area, extending outward from the approach end of any runway for seven (7) nautical miles, and rising upward from that runway end surface at a slope of sixty-five feet (65') horizontally to one foot (1') vertically for the seven (7) nautical miles of any aeronautical facility used by the public unless a permit for

such construction has been issued by the governing body responsible for operations at the aeronautical facility.

(c) The governing body of an aeronautical facility may levy a fine not to exceed one thousand dollars (\$1,000) per day against the owner of any structure constructed in violation of this section. The fine may be levied for each day until the structure is removed.

(d) This section does not apply to any structure existing on March 26, 1999, nor to any structure which has construction in progress on March 26, 1999.

**History.** Acts 1999, No. 1278, § 1.



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## A

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**Employer.**

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